

GENERAL STATUTES
of
MINNESOTA
1923

PUBLISHED UNDER THE AUTHORITY OF
LAWS OF 1923, CHAPTER 95,
APPROVED MARCH 26TH, 1923

COMPILED AND EDITED BY
HUBERT HARVEY, OF THE ST. PAUL BAR

PUBLISHER
REVIEW PUBLISHING COMPANY
ST. PAUL, 1924

CHAPTER 44.

DRAINAGE

6633.

Chapter 44 R. L. 1905 was repealed by 1909 c. 469 § 14. 1907 c. 191, entitled "An act to provide for the drainage of marsh, swamp, or wet lands, in any town or township in the state of Minnesota, by the owners of such lands, when the same cannot be drained without affecting the lands of others, and providing for a penalty for obstructing or injuring the ditches or drains constructed under the provisions of this act," was held unconstitutional (102-442, 114+244).

Prior drainage acts—1887 c. 97 (105-26, 116+1028); 1901 c. 258 (105-92, 117+153; 110-405, 125+901); 1901 c. 258, amended 1902 c. 38 (104-71, 116+109; 111-255, 126+1074; 116-504, 134+126); 1905 c. 230 (119-14, 137+419); 1907 c. 448 (104-389, 116+736; 105-55, 116+1017; 108-8, 121+217; 110-503, 124+227; 111-345, 126+1100; 113-214, 129+376).

STATE DRAINAGE COMMISSION

6634. Department of drainage and waters—There is hereby established a department to be known as the Department of Drainage and Waters, the chief officer of which shall be known as the Commissioner of Drainage and Waters. He shall be appointed by the governor and shall hold his office for a period of four years and any vacancy occurring in the office from any cause shall be filled by appointment by the governor. Said commissioner before entering upon his duties shall take the oath prescribed for state officials and shall give bond with proper sureties to the State of Minnesota in the sum of ten thousand (\$10,000) dollars conditioned for the faithful performance of his duties and accounting for all moneys that may come in his hands as such commissioner, which bond shall be approved by and filed with the secretary of state.

Said commissioner shall be a practical drainage engineer experienced in drainage and hydraulic engineering, of high standing and recognized ability; he shall devote his entire time to the duties of his office and shall receive a compensation of four thousand (\$4,000) dollars per annum payable as in the case of other state officers; he shall be provided with proper office and equipment at the seat of government and shall have and may exercise the authorities and perform the duties herein provided.

The commission heretofore known as the "State Drainage Commission" is hereby abolished and all power and authority heretofore vested in such commission under chapter 44 of the General Statutes of 1913 and amendments thereto, is hereby vested in said commissioner of drainage and waters and said commissioner is hereby authorized to exercise all the power and authority specified and granted to the state drainage commission by said chapter 44 of the General Statutes of 1913, and in addition thereto, those hereinafter specifically enumerated; and in all cases where the term "drainage commissioners" or "state drainage commissioners" is used in said chapter, the same shall be understood to mean and read "commissioner of drainage and waters," and in all cases where the term "commission" is used in said chapter meaning and referring to the state drainage commission, the same shall be read as "commissioner" and said act construed accordingly. ('07 c. 470 § 1, amended '19 c. 471 § 1) [5480]

125-105, 145+795.

The laws of 1917 and the several prior statutes form one complete drainage system, one consistent whole; they are in *pari materia* for they relate to the same subject matter, and should be construed together. (130-90, 157+998).

6635. Commissioner of drainage and waters—Powers and duties—The commissioner of drainage and wa-

ters established by this act, shall have power to construct as hereinafter provided, any ditch, drain or other watercourse within the State of Minnesota, and such ditch, drain or other watercourse may in whole or in part follow and consist of the bed of any creek, stream or river, whether meandered or not, and he may widen, deepen, straighten, change, lower or drain the channel or bed of any creek, river, lake or other natural watercourse, whether navigable or whether meandered or not, and may construct new and additional outlets to any marshy, shallow, or meandered lake for the purpose of draining the same, and may follow and extend the same into or through any city or village within the state far enough to secure a sufficient fall and flow of water to reasonably effectuate the purpose for which the work is extended, and may confine any such creek, river or other natural watercourse by means of dykes, levees and embankments to its natural or artificial bed, as laid out, and shall also, whenever it shall appear to its satisfaction that the drainage of any territory may be made more effective by the construction and maintenance of dams, or other works, for retaining and controlling the flood waters, tributary to such territory, have the power to construct or acquire such dams or other work, and flowage rights therefor, and to maintain and operate the same.

Provided, that when in any such proceedings, the waters of any creek, river or other watercourse are diverted from their natural bend by such artificial ditch or drain, such ditch or drain shall as nearly as practicable, follow the general direction of such creek, river or watercourse, and terminate therein.

And provided further, that no meandered lake shall be drained under the authority of this act, except in case such lake is normally shallow and grassy and of a marshy character or except in case such meandered lake is no longer of sufficient depth and volume to be capable of any beneficial public use of a substantial character for fishing, boating or public water supply.

Provided further, that no meandered lake shall be drained or lowered under the authority of this act unless petitioned for by at least sixty per cent of the legal voters residing within four miles of such lake, who are freeholders, whose lands are affected as shown by the viewers' report and filed in the office of the clerk of the district court of the county in which such proceedings are had.

Said commissioner of drainage and waters in addition to the authorities now granted under the provisions of said Chapter 44 of the General Statutes of 1913, is hereby authorized to make all necessary investigations to ascertain and determine the topographical features of the various watersheds of the state, viz.: the several tributaries of the Minnesota and Mississippi rivers and other rivers in the state, and ascertain and determine the works necessary to secure proper drainage outlet for the lands in each basin, and the construction of the necessary works to improve such outlet and control flood waters therein, including as near as can be ascertained the probable run-off waters of each of said basins and the important streams entering therein and shall ascertain and secure the necessary facts to determine what streams have natural facilities adapted to the creation of water power and the extent of horse power that can be secured, or other information that said commissioner shall deem

6634-6932
3-NW 431

415
415
-M 10
NW 417
-NW 285
-NW 204
-NW 229

6634
415
39
109
181

6634Eseq.
223nw 301

6634
Eseq.
33 - 243

6635Eseq.
29 - 42
29 - 74

6635
29 182
31 - 350

necessary and essential to the proper planning of the work of each basin to supply proper drainage outlet and control of flood waters, including the conservation and use of such waters.

Said commissioner is also authorized to investigate into the methods employed in the manufacture of drain tile, to make research and experimentation with a view to improving the quality of drain tile; to make investigations into the cause or causes of failures that may occur in tile drains after construction, and whenever requested by the courts, county boards, or engineers in public drainage proceedings, said commissioner shall make tests for the presence of elements in the soil and soil waters destructive to drain tile and such other tests and investigations as may be requested by the said courts, county boards, or engineers, said tests to be requested, made and reported in accordance with regulations to be furnished by said commissioner.

The commissioner shall prepare specifications governing the strength, quality and general properties of drain tile which, in his opinion, shall embody requirements for the production of a high quality drain tile, and shall cause said specifications to be published and made available to officials, contractors and manufacturers concerned with public drainage proceedings for their information and guidance. It shall be the duty of the commissioner to make inspection and tests of materials used in the manufacture of drain tile and of the manufactured product in any or all of the drain tile manufacturing plants located within the state where drain tile is made and sold to the general public, at such time or times and at such intervals as in the opinion of the commissioner may be found advisable; to keep a record of the results of such tests and to prepare and make available copies of reports thereof to officials concerned in public drainage proceedings and others within the state who may be concerned with land drainage or who may make request for copies of such tests. For the purpose of making said inspection and tests, the commissioner, or his duly authorized representatives, shall have free access to materials, manufacturing plants and appurtenances and to the manufactured drain tile at all times, and samples on which to make tests and inspection shall be furnished by the manufacturers without cost to the state.

It shall be the duty of all manufacturers of drain tile within the state who sell their products to the general public, to equip and install as a part of each manufacturing plant a first-class and up-to-date testing machine on which tests to determine the bearing strength of drain tile may be made by the commissioner, or his duly authorized representatives, the general design and capacity of which testing machines shall be approved by the commissioner and shall be erected and completed by the manufacturers ready for use within 90 days of the passage of this act; provided, however, that the original cost to any one manufacturer of drain tile by reason of the installation of the testing machine herein provided shall in no instance be made to exceed the sum of \$250.00.

Said commissioner shall also ascertain and secure the necessary information from the various parts of the state to enable him to make and furnish to the engineers of the state all necessary information as to the proper size of tile and the discharge thereof under various conditions, including information as to the proper size and discharge of open ditch construction and such information shall be included in the rules to be furnished and followed as provided in Section 1, Chapter 441 of the Laws of 1917.

Said commissioner is hereby authorized to co-oper-

ate and enter into agreement with the Minnesota State Agricultural Experiment Station and the United States government or any department thereof whenever in the opinion of said commissioner such co-operation is advisable for the purposes mentioned in this act. ('07 c. 470 § 2, amended '15 c. 273 § 1; '19 c. 471 § 2; '21 c. 327 § 1; '23 c. 328 § 1) [5481]

6635A. Powers of state drainage commission and procedure of engineers—The state drainage commission of the state of Minnesota is hereby authorized and empowered and it shall be its duty to prescribe rules and regulations for the establishment and construction of drainage projects under any and all of the drainage laws of the state in accordance with what may seem to said commission to be just and proper and consistent with the provision of law governing ditch proceedings and such commission shall furnish copies of said rules and regulations for the use of engineers, county officials and others engaged in such work, but said rules and regulations shall be construed to be advisory only.

It shall be the duty of any engineer appointed by any court or board to take charge of any drainage project to proceed therein and be governed as far as practicable in his work therein by the rules and regulations made by the said drainage commission and all such engineers engaged in any such project shall make an additional copy of their plats, maps, profiles and reports, and shall transmit such copy of all said papers to the drainage commission and such commission shall file and keep the same and shall make and keep a permanent record of such items thereof as it may deem proper in books to be prepared for that purpose and kept in the office of such commission.

In taking the levels of the surface of the ground over which the engineer shall make his survey for any such drainage project, he shall, whenever practicable, use as his base datum the sea level datum as determined by the use of the elevation of bench marks, which have heretofore or may hereafter be established by the United States geological survey, the United States coast and geodetic survey, the United States corps of engineers and other reliable engineering authorities. ('17 c. 441 § 1)

6635B. Commission to cause examinations to be made and report to court when requested—The state drainage commission is further authorized and directed upon request to examine, criticize and pass upon any plans for the construction of drainage projects which may be submitted to it by officials having the same under consideration.

Any court or county board having before it any proceedings to establish or repair any drainage project may submit to said drainage commission the petition, engineers' reports and other papers in connection therewith and propound to said commission any question relative to said proceedings or said project which it may desire to have answered and said commission and the state engineer or his deputies and assistants shall forthwith proceed to examine all the papers so submitted and shall in good faith answer all such questions so propounded and if in the opinion of the drainage commission there is any defect in any of the plans and designs so submitted, the said commissioner shall report the same back to such court or county board with its recommendations as to what alterations, corrections or additions should be made.

And whenever in the opinion of said drainage commission or said engineer it shall be deemed advisable and for the best interest of such drainage project that an examination upon the ground should be made of the route of the proposed drainage project, then said commission is hereby authorized to cause such exam-

ination to be made before passing upon the report of the engineer in said proceedings. In case such physical examination shall be made of the proposed route, the expense thereof shall be at once reported to said court or board and such expense, as it may be allowed by said board, shall form a part of the expenses of said drainage project and shall be paid as other claims against the same.

During all the proceedings carried on relative to the drainage project the commission shall give its advice to the courts or county boards, engineers and other officials connected with or in charge of such proceedings whenever advice is required. ('17 c. 441 § 2)

6636. Records of surveys, deputies and assistants—Said commissioner shall keep complete record of all surveys and investigations made by him or under his direction and of all reports made to him by other engineers connected with drainage work throughout the state as required by law. He shall have power to appoint and employ a deputy commissioner whose compensation shall be not to exceed three thousand (\$3,000) dollars per annum and such other assistant engineers, agents, and employes as may be found necessary and proper to comply with the provisions of this chapter and shall require of all deputies and assistant engineers in charge of the work to execute and file with the commissioner a bond conditioned for the faithful performance of their duties in such sum as the commissioner may specify. ('07 c. 470 § 3, amended '19 c. 471 § 3) [5482]

6637. Petition to district court—Before said state drainage commission shall construct any ditch, drain and watercourse, or deepen, drain, change, straighten, or lower the channel or bed of any creek, river, lake or other natural watercourse or other construction named in section two [6635] of this chapter, they shall (except as hereinafter provided) file with the judge of the district court for the county or counties wherein it is proposed to construct any ditch, drain or other construction referred to under this chapter, a petition setting forth the necessity thereof, and that it will be of public benefit or promote the public health, with a map showing the route of said proposed construction; estimates of the cost of the same, and description of the lands likely to be affected by such construction, such map, estimates and description of lands to be prepared by the engineer, for the drainage commission or under his direction. ('07 c. 470 § 4) [5483]

6638. Viewers — Duties — Report—Within ten days after the filing of such petition the said judge of the district court shall make an order appointing two resident freeholders of the county or counties in which said construction is proposed, not interested in the construction of the proposed work and not kin to any of the parties known to be interested therein and the state drainage commission shall appoint one who is not a resident of the county, as viewers, to meet at a time and place to be specified by the said court, preparatory to commencing their duties. The viewers after taking their oath to faithfully perform their duties shall proceed at the time fixed in said order, with or without said drainage engineer and shall prepare a tabular statement showing as far as practicable, the names of the owners of each tract of land to be benefited or damaged; the description of each tract benefited or damaged (said names of owners to be the same as appears on the county tax duplicate of said county, and the description to be given in legal form), and the total number of acres in each of said tracts; the estimated number of acres in each said tract of land to be benefited or damaged, (as the case may be); the number of acres added to any tract by the total or partial drainage of any meandered lake, or by the change of

any watercourse and the location and value of such added land; the damage, if any, to riparian rights pertaining to any tract; and the amount that each tract of land will be benefited or damaged by the construction of said work. When any ditch established under this act drains either in whole or in part any public or corporate road or benefits any such road so that the roadbed or traveled track of such road will be made better by the construction of such ditch, the viewers shall estimate the benefit arising therefrom to such roads or roadbeds, and report said benefits (names of roads and other particulars necessary to identify the corporations, private or public, to be benefited thereby, and amounts of benefits to each), as a part of their tabular statement provided for in this section; and the viewers shall also report as a part of such tabular statement, the damages awarded to each municipal or other corporation for injury to any road or roadbed, and from the necessary construction and maintenance of any bridged culverts or other works rendered necessary by the establishment of such ditch, stating the same separately; and they shall also report the total estimated benefits in respect to the entire ditch and branches, if any, and also whether or not, in their opinion the estimated expense of the construction of such ditch, including the damages awarded therefor, are greater than the utility of the proposed ditch, or that the construction of such ditch is impracticable, for any reason, stating the reason why it should not be constructed. ('07 c. 470 § 5) [5484]

6639. Disagreement—In case the viewers are unable to agree each viewer shall state separately in the report his findings on the matter disagreed upon. ('07 c. 470 § 6) [5485]

6640. Private ditch—Deduction from benefits—Whenever a public ditch is located wholly or in part in the bed of a private ditch already or partially constructed the engineer shall make an estimate of the number of cubic yards of earth already excavated on each tract of land and of the amount of the reduction in the cost of constructing the portion of the ditch on each such tract of land by reason of such private drain having been constructed, and the viewers shall deduct such amount from their estimate of benefits, if any, against such tract of land, making an appropriate notation thereof on their report. ('07 c. 470 § 7) [5486]

6641. What lands assessed—Benefits, how estimated—All lands benefited by a public ditch, drain or watercourse, and all public or corporate roads, so benefited, in whole or in part, shall be assessed in proportion to the benefits for the construction thereof, whether said ditch passes through said land or along or near the line of such road or not, and the viewers in estimating the benefits to lands or roads not traversed by said ditch shall not consider what benefits such lands or roads will receive after some other ditch or ditches shall be constructed, but only the benefits that shall be received by reason of the construction of the public ditch, as it affords an outlet for drainage, or prevents overflowing of or otherwise directly or indirectly benefits such lands or roads, and in determining the cost of draining said land or lands, there shall be included the amount paid for damages to private owners of lands, and the cost of right of way of any other ditches through such private land to the main stream, together with the cost of the construction of the ditch, office expenses, field expenses, salaries of all clerks and employes, and all fees necessary paid to officers or other persons in the proceedings. ('07 c. 470 § 8) [5487]

6642. Damages—Remedy of party aggrieved—In running said ditch, or ditches, or works through private lands not necessary to drain, it shall be the duty of

the viewers to report the amount of damages to be allowed to such owner or owners for the right of way or other damages for the construction of the ditch or ditches through such land or lands. Any person or party interested aggrieved by the amount of damages so allowed or of the disallowance of the amount of damages claimed, or any part thereof, for the land so appropriated for such ditch or laterals, or any other work authorized to be done under this act, may, within ten days after the filing of the viewers' report, petition the district court before whom said proceedings are pending for the appointment of appraisers in the same manner as is now provided by law for the appropriation of private property for public uses, with all the rights and authority incidental thereto, but the construction of any such work, ditch or laterals thereof shall not be delayed by such proceedings. ('07 c. 470 § 9) [5488]

6643. Viewers' report, when filed—Said viewers shall forthwith file with the clerk of court a report of all their doings and findings in detail, including expenses and the actual time they were engaged. They shall in every case completely perform every duty by this act imposed upon them (except in case of a reference as hereinafter provided) within thirty days from the date of their first meeting; provided that, if the water be so high or the weather so inclement, or such unavoidable accident occur as in the opinion of the judge of the district court to practically and reasonably prevent them from so doing, the necessary delay caused thereby may be excused by the said judge; but the report of said viewers must in each case state the reason for such delay, and if such reason be not deemed sufficient by the court such viewers shall forfeit one-half of the compensation hereinafter provided. ('07 c. 470 § 10) [5489]

6644. Order for hearing—Notice—Within three days after the filing of such report it shall be the duty of the said clerk of court to prepare and transmit forthwith to the judge of said court, and to the auditor of each county described in the petition a written notice of the filing of such report. Upon the receipt of such notice the judge shall make an order fixing the time and place of hearing said petition and engineers' and viewers' report. He shall also cause a notice of the time and place of such meeting to be given to all persons interested, by publication for three successive weeks prior thereto, in a newspaper printed and published in said county, and by posting at least three weeks before such meeting, printed copies thereof in three public places in each township where the proposed work is located, and one at the door of the court house in said county, of the pendency of said petition, and engineers' and viewers' reports, and of the time and place set for the hearing thereof, which notice shall be signed by the clerk of court, and shall briefly state substantially the starting points and terminal of the ditch, drain, creek or watercourse and branches, together with a description of the land through which they pass, all as appears by the engineers' report, together with the names of the owners of the land and the names of the municipal corporations that will be affected thereby, as the same appears in the report of the viewers; and within one week after beginning such publication the clerk of the court shall mail a printed copy of said notice to all non-residents of the county named in the viewers' report as affected by such proposed work, whose address is known to him, or can be ascertained by him by inquiry at the county treasurer's office; provided, that in all cases in which, for any cause, said notice shall not be given, or in any case said notice shall be legally defective, the clerk of court shall cause the same to be given again,

so that the petition may be heard at another special or adjourned meeting, which will occur more than seven days after the expiration of another notice by the publication, posting and mailing, as provided in the first instance, the date of which meeting and hearing to be fixed by the court. ('07 c. 470 § 11) [5490]

6645. Hearing—Findings and order—Re-submission to viewers—Benefits and damages—Rehearing, where order set aside—At the time and place fixed for the hearing, if the court shall be satisfied that notice thereof has been given according to law, he shall proceed to hear and consider the same; and all persons interested may appear and be heard by and before said court. Unless excused by the court, the engineer and at least two of the viewers shall be present at such hearing. If said court, from the report of the engineer and from the report of the viewers, and such other evidence as may be adduced before him, shall find that the engineers' and viewers' report and all other proceedings in the matter have been made and taken, in accordance with the provisions of this act, and that the estimated benefits to be derived from the construction of the work are greater than its total costs, including damages awarded, and that such damages and benefits have been duly awarded and assessed, and that said work will be of public utility and promote the public health and that such reports are complete and correct, he shall, by an order containing such findings, establish such a ditch as specified in the report of the state drainage engineer, and establish and confirm the viewers' report; provided, that in case the viewers' report is found to be defective or erroneous in any particular, the judge of the district court shall have authority to remedy such defect by reference to said viewers, if necessary, or otherwise, and to cause the expense of such re-reference, if any, to be assessed, against the land benefited. In case the viewers have not agreed or shall not agree in their findings, the court shall determine the proper findings, and change the viewers' reports accordingly, and provided, further, that if it appears from the evidence adduced before the court, that unequal and disproportionate assessments have been made, the matter shall be re-submitted to the viewers who shall proceed summarily, to make the necessary correction under the instructions of the court and forthwith report the same to the court, and thereupon, the court shall, by an order containing such findings, establish such ditch as specified in the report of the civil engineer, and establish and confirm the viewers' report, and shall, in such findings, determine the total cost of the construction of such ditch, drain or watercourse, laterals and branches thereof, based upon the engineers' and viewers' reports which shall include all the costs and expenses, and fees that may be necessarily incurred in the construction of the same, and connected therewith, all to be allowed by the court, and shall by an order to be made and filed therein, determine the total cost to be equitably assessed against each separate tract or parcel of land owned by the different owners, so benefited by the construction of said ditch, drain or watercourse, in proportion to said benefits, and the damages, if any, are to be allowed, and to be paid on account of the construction of the same, which shall be included in the cost of the same, in order to arrive at the total cost, which order and findings shall be filed in the office of the clerk of court, of the county where such proceedings are pending, whereupon the clerk of said court shall endorse his filing thereon, and forthwith file a certified copy of the same in the office of the county auditor of such county, and in case such ditch, drain, or watercourse extends into more than one county, the said clerk shall file a certified copy in each of the said

counties. Provided, that whenever any final order of the court establishing, or refusing to establish, any ditch in proceedings under this chapter shall be set aside, annulled or declared void by any court by reason of a failure to give proper notice of the pendency of said petition, and viewers' report, and of the time and place set for the hearing thereof, or any adjourned hearing, the court shall issue an order at any time within one year thereafter upon application of the state drainage commission for a rehearing thereof, notice of such meeting and rehearing shall be given in the same manner as hereinbefore provided for in the first instance, and at such meeting and hearing the said court shall proceed to reconsider such report, shall act upon the same, and make findings thereon as justice may require, and may re-establish such ditch in conformity with the provisions of this chapter. ('07 c. 470 § 12) [5491]

6646. State lands—In case any lands belonging to the state of Minnesota, are drained or benefited under the provisions of this act, the clerk of court shall also file a certified copy of the order and findings of the court so far as it affects state lands, but private lands shall not be included in said report, with the state auditor. ('07 c. 470 § 13) [5492]

6647. Statement—As soon as practicable after the filing of the certified copy in the office of the county auditor, or county auditors, as the case may be, as provided for in section 12 [6645] of this act, the said auditor or auditors shall make in tabular form a list and statement showing the following facts:

First—The names of the owners of all lands (except state lands), which shall not be included. The names of all public or corporate roads within their respective counties benefited by the construction of such proposed work as appears from the order on file in the proceedings.

Second—The description of said lands as the same appears in such findings, and so affected, together with the total number of acres of each tract according to the assessment rolls and tax lists of such county.

Third—The estimated number of acres in each tract of said land.

Fourth—The estimated amount of benefits and damages to each of said tracts of land, the estimated amount of benefits and damages to each public or corporate road as the same appears in said viewers' report, or as affected by the order of the court made in said proceedings.

Fifth—The amount that each of said tracts of land, and that each of said corporate roads so benefited will be liable for and must pay into the treasury of each county for the location, construction and establishment of such ditch, drain or watercourse, as shown by the order of the court on file in said petition. ('07 c. 470 § 14) [5493]

6648. Record of statement — Liens—Fees—Such statement shall then be signed by the auditor in the presence of two attesting witnesses, and shall then be duly filed with and recorded by the register of deeds of such county. The amount which each tract of land and each public or corporate road will be liable for, and the interest thereon, as hereinafter provided, shall be and remain a first and paramount lien on such land, public or corporate roads, until fully paid; and shall take precedence of all mortgages, charges, encumbrances or other liens whatever, such payments may be made as hereinafter provided. Such filings shall be deemed notice to all parties interested of the existence of such lien. The fees of such register of deeds for such recording shall be paid by the county, on the allowance and order of the court by auditor's warrant, and said statement, after the same has been recorded,

shall be returned to the auditor, to be by him placed with the other papers relating to such ditch, and carefully preserved by him. ('07 c. 470 § 15) [5494]

6649. Jury trial—Any land owner aggrieved at the decision and amount finally assessed against his said land on account of the construction of the said ditch, or on account of the disallowance in the amount of damages claimed for right-of-way or other damages, may demand a jury trial. The costs and disbursements of such trial shall be taxed against the party demanding such trial in case he fails to increase the amount of the award for damages or decrease the amount of the assessment. ('07 c. 470 § 16) [5495]

6650. Appeal—Increased cost, how paid—Any party may appeal from the judgment of any appealable order of the district court, or who claims damages or against whose property benefits are assessed may appeal to the supreme court as in civil actions from any final order except an order establishing such ditch, or drain in proceedings under this chapter, within thirty days after the filing of such order, by filing the notice of appeal and bond required as in civil actions upon appeal to the supreme court. The appellant shall also serve a copy of the notice of appeal and appeal bond on the respective attorneys in the proceeding, the attorney general of the state, also upon the clerk of the district court, and file proof of such service and the original notice with the clerk, whereupon the said clerk shall certify the case to the supreme court in the same manner as in other cases appealed to said court. In case the appellant prevails in the supreme court, and the cost of the construction of said ditch, drain or water course is increased on account of said appeal, having been determined in favor of said appellant, and damages or costs are awarded to the appellant, upon a remittitur from the supreme court to the district court the clerk of the district court shall notify the judge of the judicial district wherein said appeal was taken, advising the court of the action of the supreme court in the proceeding, whereupon the judge of the district court shall make a further finding and order assessing the amount against the tracts of land originally assessed for the construction of the said ditch and proportionately distribute the same, in proportion to, and in the same manner as the original assessment. The clerk shall thereupon certify the same to the county auditor, or county auditors as the case may be, and the said county auditor or auditors shall cause the same to be spread upon the tax duplicate record, and a statement thereof to be filed in the register's office in the same manner as under the original assessments. ('07 c. 470 § 17) [5496]

6651. Contract, how let—Payment, how made—At the time of filing of the order and findings by the court, as provided for the general assessment, the clerk of the district court shall also furnish a certified copy thereof to the drainage commission of the state of Minnesota, whereupon said drainage commission shall proceed to advertise for bids for the construction of any proposed ditch or lateral, or for the repairing, extending, deepening, strengthening, altering, or cleaning out any ditch, river or natural water course proposed to be repaired, extended, deepened, altered, or cleaned out, or for the construction of new and additional outlets, for the purpose of draining any shallow, marshy, or meandered lake, or draining any lake or body of water that has been caused to overflow, on account of additional drains or water courses, running into the same which have been constructed for the purpose of the drainage of land or for the benefit of the public health. Said bid shall be made with reference to plans and specifications to be furnished by said commission and the contract for the construction

of said works shall be let to the lowest responsible bidder. The successful bidder shall be required to furnish good and sufficient bond for the faithful performance and construction of such work, and the payment of all labor, material and supplies furnished in the construction of such ditch, or in such repairing, extending, deepening, straightening or clearing out any of such ditch, or work authorized to be done under this act. Payment shall be made as said work progresses, and in accordance with the rules that may be adopted by said drainage commission, or specified in the contract. Such contracts and rules shall be approved by the attorney general of the state. Before the final payment is made the ditch or work under contract for construction shall be carefully inspected, and the work approved by the state drainage commission, and in case the contractors and the state drainage commission cannot agree upon the approval of said contract they shall have the authority to submit the same to any competent disinterested civil engineer whom they may agree upon, whose compensation therefor shall be paid one-half by the contractor, and the balance out of any appropriation available for draining state lands upon the warrant of the state auditor approved by the state drainage commission and whose decision when filed in the court where the proceedings are had shall be final. ('07 c. 470 § 18) [5497]

6652. Ditch defined—Whenever the word "ditch" is used in this act it shall be construed to mean "ditch," "drain," "creek," "pond," "water course," "outlet," "river," (whether navigable or otherwise), "lake," (whether navigable or otherwise), and the word "ditch," shall mean "ditches," whenever the sense requires it. ('07 c. 470 § 19) [5498]

6653. Supervision—Any and all work provided for in this chapter shall be done under the constant supervision and inspection of the engineer of said commission, or any assistant engineer duly appointed by said commission. ('07 c. 470 § 20) [5499]

6654. Authority to enter on land—The viewers and engineer shall have the right to enter upon any lands for the purpose of making preliminary surveys or locating such ditch or estimating damages and to do any act necessary for the proper performance of their duties and any person attempting to prevent or interfere with them in so doing shall be punished, upon conviction, by the court as for a misdemeanor. ('07 c. 470 § 21) [5500]

6655. Co-operation with county board—The drainage commission of the state of Minnesota, is hereby authorized to co-operate with the county board of each county wherein a county ditch or judicial ditch, or a portion thereof is located, or may be located, in enlarging, extending, repairing or otherwise bettering any such ditch now completed, or that may be now in the course of construction, or hereafter constructed, or in deepening, widening, straightening, or otherwise improving, any natural water course into which the water of any county, judicial or state ditch flows, or in the construction of additional outlets to any lake, or body of water, or meandered lake that has become overflowed by reason of additional drain, and ditches having been constructed into the same, and the waters flowing therefrom into such lake, body of water, or meandered lake, causing the said lake, body of water, or meandered lake, to overflow and damage abutting and adjacent land, whenever in their judgment it is necessary and desirable so to do. ('07 c. 470 § 22) [5501]

6656. County bonds—The county board in each and every county in this state wherein any such state or judicial ditch is proposed to be wholly or partly located and established, shall issue the bonds of their respec-

tive counties in an amount not greater than the assessments against lands in such county as evidenced by the statement provided for by sections 14 and 15 [6647, 6648] of this act, to defray the expenses incurred or to be incurred in locating, constructing and establishing as much of any ditch as may be located within such county, or in such relation to such county as to affect lands therein within the terms of this act.

The word "expense" shall be construed to mean and to cover every item of the cost of said ditch from its inception to its completion, and all fees and expenses incurred in pursuance thereof.

Such bonds shall pledge the full faith, credit and resources of the county issuing the same for the prompt payment of the principal and interest thereof, and shall be payable at such time or times not to exceed twenty years from their date and shall bear such rate of interest not to exceed six per centum per annum, payable annually or semi-annually as the county board shall by resolution determine.

Each bond shall contain a recital that it is issued by authority of and in strict accordance with the provisions of this act, and shall be signed by the chairman of said board and countersigned by the county auditor, who shall keep a record thereof.

Said county board shall have power to negotiate said bonds as they shall deem for the best interest of said county but not for less than their par value. The proceeds from the sale of such bonds when received by the county treasurer, shall be paid to the state treasurer, and by him credited to the state drainage fund, which is hereby created. Said county board shall provide moneys for the payment of the principal and interest of said bonds as they severally mature, which moneys shall be placed in the general county ditch fund, into which fund it may transfer any surplus moneys remaining in the general revenue fund or other funds of the county, which can properly be used for the purpose of this act, into which fund shall also be paid all moneys received from the payment of any liens created under the provisions of this act, and such board is hereby authorized to pay said drainage bonds out of any available funds in the county treasury when the moneys on hand in the general ditch fund of the county are insufficient to meet the payment of bonds issued in ditch proceedings when the same mature, but the fund from which such moneys shall be taken or used for the payment of bonds as they mature shall be replenished with interest at the rate of six per cent per annum from collections of unpaid assessments for ditches, drains or water courses constructed under any proceedings had hereunder.

Whenever heretofore there shall have been filed with and recorded by the register of deeds of any county in this state a statement in connection with the construction of a state or judicial ditch, as provided by section 15 [6648] of this act, the county board of such county is authorized to issue, negotiate and sell the bonds of such county to the amount, for the purposes and in the manner hereinbefore specified, and any bonds so issued shall be subject to all the provisions hereof, and are in all respects legalized and made binding and valid obligations of the county issuing the same and according to their terms. ('07 c. 470 § 23, amended '13 c. 4 § 1) [5502]

6657. Interest—Premium on bonds—The amount that each tract of land, public or corporate road, shall be liable for on account of the location, construction and establishment of any ditch or ditches under the provisions of this act shall bear interest from the date of the filing of the auditor's statement in the register of deeds office at the rate of six per cent (6 per cent) per annum until paid; provided, that when bonds are

issued by the county for the construction and establishment of such ditch the same rate of interest shall be charged as said bonds so issued bear, and said interest shall constitute an additional lien on said lands or roads until fully paid, which said interest when about to be paid shall be computed by the county auditor, providing that if said bonds are sold at a premium, such premium shall be used as far as may be to make up any deficiency in the assessments levied by the presiding judge of the court in the proceedings, and the balance remaining of such premium, if any, shall be used as far as practicable in keeping such ditch in repair and free from obstruction, so as to answer its original purpose. ('07 c. 470 § 24) [5503]

6658. Liens, when payable—Taxes—Certificate of payment—The payment of such liens shall be made to the treasurer of said county as follows: One-fifteenth of said principal, with interest thereon, on or before five years from said filing in the register of deeds office. One-fifteenth of the same on or before six years. One-fifteenth of the same on or before seven years. One-fifteenth of the same on or before eight years. One-fifteenth of the same on or before nine years. One-fifteenth of the same on or before ten years. One-fifteenth of the same on or before eleven years. One-fifteenth of the same on or before twelve years. One-fifteenth of the same on or before thirteen years. One-fifteenth of the same on or before fourteen years. One-fifteenth of the same on or before fifteen years. One-fifteenth of the same on or before sixteen years. One-fifteenth of the same on or before seventeen years. One-fifteenth of the same on or before eighteen years. One-fifteenth of the same on or before nineteen years. All reckoned from the date of said filing; provided, where the annual installment to be assessed amounts to less than one mill per year, the auditor shall levy the amount of one mill per year for as many years as is necessary at that rate to pay the full lien levied against the tract or parcel of land. On or before the 15th day of November, of the fourth year next following such filing the auditor shall enter on the tax list of said county the amount of such lien then remaining unpaid against each respective tract of land subject thereto, as a tax on said tracts, with a proper notation to secure the successive entry each year thereafter of the unpaid balance of such lien. One-fifteenth of said taxes shall become due and payable, with accumulated interest thereon, at the time and in the manner and be subject to and be collected with like penalties as all other taxes for said year on said tracts in which such entry was made, and another one-fifteenth with and as the taxes of each successive year, until all is paid. The provisions of sections 23 [6656] and 25 [6658], as amended, shall be applicable in all proceedings for the construction of ditches heretofore commenced, and prosecuted under the provisions of this act where bonds have not been issued. When payment of the full amount of such lien, with accumulated interest, shall thus or at any time be made, the auditor, upon presentation of a receipt from the treasurer to that effect, shall issue, under his hand and official seal, a certificate of such payment, and the same, when recorded in the office of the register of deeds, shall release and discharge said lien of record. ('07 c. 470 § 25) [5504]

6659. Powers and duties of board—A majority of the members of said drainage commission of the state of Minnesota, shall have authority to act in all matters, and perform all duties required of the commission to be performed pertaining to the drainage of the state lands, and such private lands as they may be compelled to pass through in draining said lands, and shall from such records and surveys as are now in existence, and

from such surveys and records as they may find it necessary to make, ascertain the number of acres of low or wet lands belonging to the state, that it is necessary to drain in order to protect the public health, convenience, and welfare of the community, and to make said lands fit for agricultural purposes. They shall ascertain where the same are located, and what ditch or ditches are necessary to drain said land, and said commission is hereby authorized, empowered by a majority of the members thereof, and without any petition or judicial procedure provided for in section four (4) [6637] of this act to construct as many main and lateral ditches of the size and capacity as are necessary to effectually drain such land. They may repair, extend, deepen, and alter or clean out any ditch heretofore or hereafter constructed, by the state or under its direction, when necessary to drain the land originally intended to be drained by such ditch. The said commission, in its discretion, shall drain the state lands that are most accessible to highways, villages and railroads before draining such lands more remote. In the execution of the provisions of this chapter the said commission may appoint as many agents and employes as are necessary to comply with the provisions herein. ('07 c. 470 § 26) [5505]

6660. State ditch—Survey, map, profile, etc.—Wherever the said drainage commission shall find the state of Minnesota owns land in sufficient bodies to warrant a state ditch, it shall proceed to determine the course of said ditch, the size thereof as to depth and width at the top and bottom, and cause an accurate survey to be made upon the ground, with stakes, on which shall be written in plain figures the station number and the amount in feet, to be cut. These stakes shall be set at least every one hundred feet. Every main ditch shall run to some permanent water course, stream or lake, of sufficient size to carry the water coming into the same from such ditch without overflowing the banks thereof at high water mark. Said commission shall also cause a map of such ditch to be made on a uniform or convenient scale showing the location of said ditch, all topography for a width of at least one-quarter of a mile on each side, the depths of soundings made in marshes and lakes, and designate the character and kind of surface and subsoil, so far as the same may be readily ascertained, and the legal subdivision of all lands drained by such ditch, and if the same passes through or drains private lands, said map shall show the names of all the owners, so far as known or can be ascertained, and if unknown, to so state; said map shall also designate what private lands (if any) are drained and what private lands (if any) are not drained by said ditch. All topographical features to be located by actual survey to the center line of the ditch. Said commission shall also cause a profile of the center line of said ditch to be made, which, as to details, will at least show the elevations of the natural surface at each station of one hundred feet or any necessary fraction thereof, or as nearly as practicable, the elevations of the grade line; the ratio of the grade; the cutting at each station; the elevation and description of permanent "bench marks," of which one shall be established at each end of the ditch, and one as nearly as practicable midway between the source and the outlet. Where natural objects do not exist upon which to make such "bench marks," artificial posts shall be set in a stable, and permanent manner for such "bench marks." All elevations, as far as possible or practicable to be referred to the standard datum of sea level. Said map, profile and specifications signed by a majority of the members of said commission shall be filed in the office of the state auditor, and certified copies thereof filed with the auditor of

each county in which said ditch is to be located. ('07 c. 470 § 27) [5506]

6661. Rivers and water courses—Widening, deepening, etc.—Whenever in any drainage proceeding under any laws of this state whereby the cost of construction is assessed against the benefited property (or) corporations it is proposed to widen, deepen, straighten or clean out any river or other natural water course or drain any low, shallow or grassy lake, or any body of water that has become overflowed by reason of the water from ditches previously constructed, under any drainage act, flowing into the same causing damage to abutting and adjacent lands, or by which it is proposed to promote the public health and which will be of public benefit and general utility; and said state drainage commission shall be satisfied that it is expedient and necessary, they are hereby authorized and empowered to appropriate out of any state drainage funds which may be created by law sufficient to defray not to exceed one-half of the actual cost and expense of doing such work. Provided, that no contract for said work shall be let without the approval of the state drainage commission. ('07 c. 470 § 28) [5507]

6662. Orders of court—Jurisdiction—The judges of the district court of the state before whom any petition may be filed under the provisions of this act shall have power to make any order necessary from time to time in any proceedings hereunder or modify the same as justice may require at any time during the pendency thereof and shall not lose jurisdiction of the proceedings by reason of failure to give proper notice of failure to hold any hearing noticed or ordered to be held for the consideration of any matter connected with the proceedings or committed to them, and may make any new and additional order in the premises as justice may require, to bring the parties interested before them, to promote the final completion of the ditch or works petitioned for or to establish and complete any state ditch, drain or water course, or drain any marshy or meandered lake under the provisions of this act. ('07 c. 470 § 29) [5508]

6663. Obstructing commission, etc.—Penalty—It shall be unlawful for any person to interfere with or obstruct the said state drainage commission, or any officer, servant or employe thereof, or of the court from entering upon the land for the purpose of making a survey for the purpose of establishing any ditch, drain or water course, or interfere with or obstruct the viewers appointed by the court or said commission, or other person lawfully engaged in constructing said ditch, drain or water course. Any person found guilty thereof, shall be punished as if for a misdemeanor under the statutes. ('07 c. 470 § 30) [5509]

6664. Traveling expenses—The members of said commission shall receive their necessary traveling expenses for attending meetings of the commission, viewing or inspecting the work or proposed work or other duties connected therewith. ('07 c. 470 § 31) [5510]

6665. Duties of secretary—Expenses, fees, etc.—The secretary of the commission, shall keep complete records of the proceedings of the commission, and of all surveys and work constructed under this act, which records shall become a part of the state auditor's office. He shall, when requested, or his duties require him so to do, certify to any record or proceeding on file in the office of the secretary, and shall be allowed his necessary expenses, and costs of all necessary books and record blanks, stationery and other expenses or disbursements paid out by him for the purpose of procuring such records, or in the discharge of his duties as such secretary, and in addition thereto, he shall be allowed such fees and compensation for extra services so rendered, or for necessary clerk hire, as to

the members of the commission shall seem just and reasonable. All other officers or persons performing any services in any proceeding, except the judge of the district court, shall receive reasonable compensation to be allowed by the commission, except contractors, payments to whom shall be made as provided for in section eighteen [6651] of this act, and all bills or claims, including expenses of the engineers and viewers, shall be audited by the commission, and paid by warrant, drawn by the secretary and countersigned by the chairman of said commission, and paid out of the state drainage fund hereinbefore provided for. ('07 c. 470 § 32) [5511]

125-105, 145 + 795.

6666
205-NW 625

6666. Act liberally construed—This act shall be liberally construed so as to promote the public health, the construction and improvement of roads, and the drainage and reclamation of wet and overflowed lands. ('07 c. 470 § 33) [5512]

6667. Additional powers of commission—The state drainage commission, in addition to its other powers hereinbefore enumerated, shall have the power, whenever the same will be of public benefit and utility and will promote the public health and welfare,

First. To clean out, repair, extend or otherwise improve any state ditch heretofore or hereafter constructed and to determine and decide whether or not any other public ditch shall empty therein, and if allowed so to do, to determine and prescribe upon what terms and conditions it be allowed so to empty into such state ditch.

Second. To make surveys of rivers, creeks or streams within this state for the improvement thereof and to widen, deepen, straighten, change the course of, clean out, or otherwise improve any river, creek or stream in this state whenever the same shall have overflowed or shall hereafter overflow by reason of the water or sediment from any public drainage ditch or ditches, emptying therein, or otherwise by reason of said drainage ditches, and causing damage to abutting or adjacent lands. Provided, that the said state drainage commission shall, as a condition precedent to the making of any of said improvements, or to the exercise by said commission of any of the powers conferred by this section, require that any portion of the cost or expense to be incurred thereby shall be paid by the town or county or by the person or persons benefited or liable to be benefited by such improvement, and the said state drainage commission, in carrying out the provisions of this section is hereby authorized to enter into any necessary contract with any such town, county, person or persons.

Said state drainage commission shall also have the power to acquire title to any private property necessary for any of its authorized purposes, by purchase or by the exercise of the right of eminent domain, and in such last mentioned case the said commission may request the attorney general of this state to take proceedings for that purpose, and it shall thereupon be the duty of the attorney general of this state to proceed to acquire the necessary title to said private property in the manner and according to the provisions of chapter 41 of the Revised Laws of 1905 and acts amendatory thereof, anything therein contained to the contrary notwithstanding and the use of said lands for the purposes aforesaid, or either of them or otherwise, by the state drainage commission in the furtherance of its lawful projects is hereby declared to be a public purpose. Said commission shall also have the power to let contract for all such work and to change the plans thereof when necessary and to supervise, control and accept the same when complete and to cause the same and all preliminary expense in connec-

6666
165-M 74

tion therewith to be paid for out of any funds appropriated to the use of the said state drainage commission. ('07 c. 470, amended '09 c. 207 § 1) [5513]

The provisions of R. L. 1905 c. 41 are included in chapter 41 hereof.

Acts granting special powers—1911 c. 138, entitled "An act to authorize the state drainage commission to construct an outlet for the waters of the Mustinka state ditch in Traverse county, Minnesota, and to appropriate money therefor," and 1911 c. 370, entitled "An act to authorize the state drainage commission to co-operate in the construction of an additional outlet for the waters of Snake river in Marshall county, Minnesota, and to appropriate money therefor."

6668. Topographical survey of watersheds—The state drainage commission of the state of Minnesota is hereby authorized and directed to cause to be made a topographical survey of the several watersheds of the state for the purpose of securing data from which complete plans for a uniform system of drainage may be prepared. ('09 c. 471 § 1) [5517]

6669. Maps, plans, etc.—As soon as practicable after the completion of the survey of any watershed or part of a watershed, said drainage commission shall cause to be prepared such maps, plans, specifications and estimates of the cost as it may deem necessary for the system or systems of drains or ditches for the several counties included in whole or part in such watersheds; such maps, plans and estimates to be prepared in duplicate and to be divided into sections so as to include in each section or sections as far as practicable the plans and estimates relating to any county included in the survey. ('09 c. 471 § 2) [5518]

6670. Report to county—On the completion of the report of such survey, or part thereof relating to any county in this state, a copy of so much of such report relating to such county shall be filed with the county auditor of the county included therein. ('09 c. 471 § 3) [5519]

6671. Plans to be followed—Upon the filing of such report with the county auditor, as provided for in section three of this act, all subsequent drainage work carried out under any of the drainage laws of this state shall be constructed in conformity with such plans except as modified by the state drainage commission. ('09 c. 471 § 4) [5520]

6672. Commission to prescribe rules—The state drainage commission shall prescribe such rules and regulations governing the construction of ditches in any county in this state under the provisions of this act, as may seem to them just and proper. ('09 c. 471 § 5) [5521]

6673. To co-operate with United States department of agriculture—The drainage commission of the state of Minnesota is hereby authorized to co-operate with the department of agriculture of the United States in the execution of drainage or topographical surveys in any county in this state whenever said drainage commission deem it expedient and in the best interest of the state so to do. ('09 c. 471 § 6) [5522]

COUNTY DITCHES

See 1907 c. 330, being "An act authorizing any county in this state having a population of less than 10,000 inhabitants, to issue its warrants and bonds for the purpose of draining swamps and marshy lands located in certain townships in such county, and creating a commission to have charge of the work and prescribe their compensation." The commission was to be appointed on or before July 1, 1907.

6674. Control of flood waters and construction of dykes or dams—The county board of the several counties and the district court of the several districts of the state of Minnesota, are hereby authorized and empowered to make all necessary orders for and cause to be constructed and maintained, public drainage systems, drains and ditches to deepen, widen, straighten or change the channel or bed of any river, creek or water way following the general direction thereof, and

when practical terminating therein to extend the same into or through any city or village for the purpose of securing a suitable outlet to drain in whole or in part, meandered lakes which have become normally shallow and of a marshy character or which are no longer of sufficient depth or volume to be of any substantial public use for fishing, boating or water supply, and when deemed necessary to control flood waters therein may raise, lower or establish the height of water in any lake, body of water or water course and cause to be constructed all necessary structures and improvements to maintain the same for flood control or other public purposes, and where only a part of the meandered lake is to be drained to cause to be constructed dykes or dams for the purpose of holding the water at ordinary high water mark in that part of the lake not to be drained, but no meandered lake upon which any city or village is now a riparian owner shall be drained or lowered unless by the approval of a majority vote of the legal voters of said city or village at any annual or special election held for such purpose. ('05 c. 230 § 1, amended '09 c. 469 § 1; '15 c. 300 § 1; '17 c. 441 § 3) [5523]

See 1913 c. 528, approved April 25, 1913, providing for reassessment of benefits and damages, where a ditch has been established which drains a meandered lake, and the landowner is entitled to more or less land of the lake bed than was taken, awarded, or considered as the basis of assessment, and providing that applications for reassessment must be filed within 90 days after passage of the act.

1905 c. 230 is constitutional (102-391, 113+914). Departure from water course, when authorized (104-364, 116+646). Findings that lakes are not normally grassy and of marshy character, or no longer of sufficient depth to be of beneficial public use (117-369, 135+1003).

See 119-261, 138+24. '23 c. 217, authorizes county board of counties of an assessed valuation of \$300,000,000, and an area of 5,000 square miles to purchase, use and insure dredging machines. Jurisdiction of court under laws 1909, where ditch is wholly within one county with no benefits or damages in an adjoining county. Laws 1909 held not unconstitutional (131-43, 154+617). Power given is broad (137-167, 163+136; 140-237, 167+1043). Power to extend ditch through cities to secure outlet (142-165, 171+311). Crow Lake is not within class the statute permits to be drained (144-78, 174+522). Draining a meandered lake where its waters have been greatly reduced (146-150, 178+595).

6675. Rivers, water courses, etc.—Appropriations for—The county board of any county wherein is situated any river, water course or creek in which the natural flow of water has been raised, increased or obstructed by reason of any artificial drainage flowing into the same, or any of its tributaries, are hereby authorized by a unanimous vote of all the members of said board to appropriate such a sum of money out of the county revenue fund to aid in defraying the expenses in deepening, straightening or widening such river, water course or creek, or removing such obstruction therefrom, as in their judgment is just and right, but said moneys so appropriated shall in no event exceed one-half of the expense so incurred, in deepening, straightening and widening said river, water course or creek, or in removing such obstruction therefrom, and the balance of such expense shall be assessed against the lands benefited as provided in this act. ('05 c. 230 § 2) [5524]

6676. Petition shall be filed—Before any public ditch or drain or other work specified in Section 6674 shall be established under the provisions of this act, a petition signed by not less than 25% of the owners of the land described in such petition, but in no event shall more than eight signers be required, or by the supervisor of any township or the duly authorized officers of any city or village council, which township, village or city is liable to be affected by or assessed for the proposed construction by the duly authorized agent of any public institution, corporation or railroad whose lands or property will be liable to be

6674 Note
167-M 45
209-NW 63
23-G.S. 673

6676 142
159-M
6676 74
165-M 625
205-NW

6674 Et. seq.
25 — 415
157-M 500
196-NW 666
198-NW 456
6676
201-NW 413
6674
— 348
9-M 142
-G.S. 6720

6674 Et. seq. 6674R 6674 Et. seq. 25 — 415²⁹
2-M 491 29 — 42 167-M 10 25 — 415⁵⁶
3-NW 431 29 — 50 171-M 478 27 — 51
29 — 74 208-NW 417 27 — 140
214-NW 285 27 — 204
27 — 234

affected by or assessed for the expense of the construction of same or by the state board of control or its duly authorized agent, setting forth the necessity thereof that the same will be of public utility and will promote the public health, the description of the starting point, the general course and the terminus of same together with a description of the lands over which the proposed ditch or improvement passes, and that the petitioners will pay all costs and expenses which may be incurred in case the proceedings are dismissed, or for any reason no contract for the construction thereof is let, shall be filed if for a county ditch with the county auditor and if for a judicial ditch, with the clerk of the district court; provided that in all cases where proceedings to establish a public ditch shall include the reconstruction or extension of an existing ditch or ditch system, the property which has already been assessed for such existing ditch or ditch system shall not be assessable in the new proceeding unless such property is especially benefited thereby or for such benefits, if any, as may result thereto by reason of the improvement of the outlet of such original ditch or ditch system. ('05 c. 230 § 3, amended '07 c. 367 § 1; '09 c. 469 § 2; '11 c. 384 § 1; '17 c. 441 § 4; '21 c. 508 § 1) [5525]

By 1907 c. 367 § 11, 1905 c. 311 was repealed. Where petitioners did not sign bond, and there was failure to establish ditch, they were not liable for preliminary expenses paid by county (111-345, 126+1100). Petition sufficiently set forth that ditch will be public benefit, and will promote public health (116-326, 133+971). Statutory bond with superadded conditions. (122-505, 142+899). Presumption in bond is such as required by law. (123-438, 143+970). Despite jurisdictional defects in description, bond indemnifies for preliminary expenses (124-496, 145+380). New bond (131-46, 154+619). The judge satisfied of existence and compliance of requisite conditions may order survey from source to outlet (134-436, 159+965). Petition a jurisdictional prerequisite limited to statutory provisions (136-146, 161+379; 137-167, 163+136). Bond and effect of laws ('17 c. 455, 140-375, 168+184). Sufficiency of petition to confer jurisdiction resulting in drainage of meandered lake (142-38, 170+883). General drainage law authorizes construction of drains whenever prescribed conditions exist whether within or without corporate limits of city (142-166, 171+311). Ownership in land described though not traversed but yet benefited qualifies petitioners (143-970, 174+313). Slight deviation from the statute in mailing a "printed copy" two days before publication of the notice is of immaterial consequence (150-120, 184+678). '17 c. 441 § 15, not applicable in that the contemplated drainage is a county ditch proceeding under this statute (151-212, 187+410).

6677
198-NW 456
6678
156-M 96
157-M 500
198-NW 449

6677. Expense to survey in ditch proceedings not to exceed certain limit—In all drainage ditch proceedings in which a survey of the line of the proposed ditch has been directed by order of the court or county board, the expense of such survey shall not exceed the penalty named in the bond given by the petitioners in said proceeding and no claims in excess of such amount shall be audited or paid by direction of the court or board unless in any such proceeding one or more of the petitioners therein shall within such time as the county board, in case of a county ditch, or the court, in case of a judicial ditch, shall direct, make and file a bond with sufficient sureties in such amount as such county board or court shall direct, conditioned as required by section 5525, General Statutes 1913. ('17 c. 455 § 1)

Proceedings to establish judicial ditch not stopped on account of bond (140-377, 168+185).

6678
9-M 220
4-NW 318
5-NW 277

6678. Appointment of engineer and his duties, together with report to be filed with auditor or clerk of court and proceedings to follow—Upon the filing of the petition and bond as herein provided, the county board in a county ditch proceeding and the judge of the district court in a judicial ditch proceeding, shall within 30 days thereafter by order appoint a competent and experienced civil engineer, and direct him to proceed and examine into and report within the time fixed in said order to said board or court all matters necessary

6678
M 383
M 390
6678R
222nw 239
6694R
6678R
229nw 878
6681R
6684R

and essential to disclose the practicability, necessity and advisability of the construction of the proposed ditch or improvement, and the engineer so appointed shall within 10 days thereafter take and subscribe an oath to faithfully perform the duties assigned to him according to the best of his ability, and shall give a bond in the sum of \$5,000 with good and sufficient surety, payable to the county or counties affected by the proposed ditch or improvement, for the benefit of such county or counties, and also for the use of all parties aggrieved or injured by any negligence or malfeasance on the part of said engineer, conditioned that he will diligently, honestly, and to the best of his skill and ability perform his duties as such engineer in said proceeding, said bond to be approved by the auditor or the clerk, as the case may be, and thereupon said engineer shall without delay proceed and examine all matters named and referred to in said petition, and make such preliminary survey of the territory likely to be affected by the proposed improvement as will enable him to fully determine whether the same is necessary or practicable and report accordingly, and if some other or different plan than that described in the petition is found practical, said engineer shall so report, giving such detail and information as will be necessary to fully inform the court or county board on all matters pertaining to the practicability or feasibility of the proposed plan either as outlined in said petition or according to some other or different plan that may be designated or recommended by said engineer, but it shall be his duty to outline and designate all changes whether by extension, adding main laterals or otherwise that may be necessary to make the plan of the proposed improvement practicable and feasible, showing the probable size, character and cost of such laterals, and if the construction of a ditch or drain is involved in the proposed improvement, said engineer shall especially examine and report the nature and capacity of the outlet and any extension that may be necessary to supply the same, and if he finds the improvement petitioned for is feasible, he shall include in his report a map of the proposed improvement, giving the description of the different tracts of land likely to be affected, and outline thereon any recommended changes, and give so far as known, the names of the owners of the property and corporations affected, and the probable area that is likely to be drained or affected by the proposed improvement, and such other information as the board or court may order.

Upon the filing of the report of the engineer as herein provided with the county auditor or clerk of the district court, as the case may be, it shall be the duty of said auditor to immediately notify the county board, or the clerk, the judge of the district court of the filing of said report, and the said auditor or said clerk with the approval of the judge, shall fix a time for the hearing thereon, not to exceed 30 days from the date of filing thereof, and within 10 days thereafter shall by mail notify the several petitioners and the owners of the several tracts of land affected by the proposed proceeding as shown in the engineer's report, of the time and place of said hearing, and at such time and place fixed, said engineer shall attend before said county board or judge of the district court, and make such explanation and supply such information as may be necessary to fully inform said board or court of all facts named or referred to in his report, and such other facts as affect or relate to such improvement petitioned for or as recommended by him, and the petitioners and all other parties interested may appear and be heard, and if upon full hearing, it shall appear that the proposed improvement is not practical and no plan is reported by the engineer whereby it can

be made practical, or is not of public benefit or utility, or that the outlet is not of sufficient capacity, then said petition shall be dismissed, but if the county board or district court shall be satisfied that the proposed improvement as outlined in said petition or as modified and recommended by the engineer is practical, that there is necessity therefor, and that it will be a public benefit and promote the public health, and have an outlet of sufficient capacity, then said board or court shall so find and by said order shall designate the changes that shall be made in the proposed improvement from that outlined in the petition; said changes may be described in general terms, and shall be sufficiently described by attaching to said order and said petition, a map drawn by said engineer outlining the proposed improvement thereon, and the changes made, and thereafter said petition shall be treated as modified accordingly. Upon the filing of said order, said board or court shall order said engineer or any other engineer, if a change of engineers shall be determined, to proceed and make a detailed survey and furnish all necessary plans and specifications for the proposed improvement, and report the same to said board or court with all reasonable dispatch, and in case of a change of engineers, each new engineer shall make and file the oath and bond as provided in this section.

Upon the filing of such order, such engineer shall forthwith make a correct survey of the line of said ditch, drain, creek or water course, and of the branches thereof, if any, from its source or sources, to its outlet, or outlets; and he shall cause stakes or monuments to be set along said line, numbered progressively up or down stream, each one hundred feet; and he shall make a computation of the number of cubic yards of earth to be excavated and removed from said ditch, drain, creek or water course between each of the one hundred foot stakes, and the estimated cost per cubic yard for the removal thereof, and shall sum up the total number of cubic yards of earth to be excavated and removed for the entire length of such ditch, drain, creek or water course, and shall make an itemized tabulation of all cleaning of obstructions of water courses, building of flumes, of other wood or masonry work, construction of fences for protection of the ditch, and construction of bridges or other additional construction work found necessary, together with the estimated cost thereof, and shall make an estimate of the total cost of laying out, establishing and constructing the whole work (including branch ditches, if any) and including all preliminary and other expenses connected therewith, and with the inspecting and certifying to the work when and as the same is completed. He shall also, in tabular form, give the depth of cut, width at the bottom and width at the top, at the source, outlet, and at each one hundred foot stake or monument of said ditch, creek or water course; and he shall specify the time, so far as practicable, and the manner in which the work shall be done, and may for that purpose set a different time for completing the several contracts, and also for completing any station or stations included in each contract, and shall have power, when he finds it necessary, to provide for running said ditch under ground, through drain tiles, or other materials, as he deems best, by specifying the size and kind of tile, or other material to be used in such underground work, and shall estimate the cost of the same, as a part of the total cost of the work.

He shall also include in his report a form of contract as complete in its provisions as practicable and which shall contain detailed and complete specifications by direct statement, or by reference to other parts of the report, and shall provide for all necessary supervision of the laying of tile, excavation and other con-

struction work of the contractor or contractors, and which shall define the relation which shall exist between the county and the contractor or contractors and which shall give the engineer the right with the consent of the county board or the judge of the district court, as the case may be, to modify his reports, plans and specifications as the work proceeds, and as circumstances may require, provided no changes are made that will substantially impair the usefulness of any part of the ditch, or substantially alter its original character or increase its total cost by more than ten per centum (10%) of the total original contract price for the construction thereof, but no such increase shall make the cost of the ditch or work exceed the total estimated benefits as found by the court or board, which added cost is to be paid by the county to the contractor at the cost fixed for like work in said contract, and the county attorney, upon request from the engineer, shall assist him in the preparation of said form of contract, specifications and provisions. In locating a public ditch, drain, creek or water course or the branches thereof, the engineer may vary from the line described in the petition, as finally adopted by the board or court, or from the starting point thereof, as he deems best, and as he finds necessary for the complete drainage of the lands likely to be assessed for the ditch originally petitioned for, and, provided, that he shall have authority to specify such branch ditch, or ditches, as in his opinion may be necessary to give owners of lands likely to be assessed for the construction of the main ditch as finally modified by the court or board, the full benefit thereof, and he shall do the same things and report the same data, tabulations and estimates with reference to said branches as are required by this law with reference to the public ditch, drain, creek or water course or the branches thereof, described in the petition; provided, that such branch ditch, or branch ditches may either be opened at the same time and in the same manner as the main ditch, or the engineer may only locate said branch, ditch or ditches for future construction, but he must fix a time limit as to the construction of any such branch ditches. In all cases in which the route proposed is along highways already established, the engineer shall locate the ditch at sufficient distance from the center of such highway to admit of a good road along the central line thereof. That earth taken from the ditch shall be so placed, and the brush or timber taken from the right-of-way of such ditch may be so placed upon the roadway as to form a turnpike, which shall be provided with sufficient and suitable culverts or openings so as not to obstruct the natural flow of surface water in time of high water, and no nearer to the margin thereof than two feet. When there is not sufficient fall in the length of the route described in the petition to drain the land adjacent thereto, or when for other reason it appears expedient, he may shorten or extend the ditch from the outlet named in the petition far enough to reasonably effectuate the purpose for which the work is intended. When, in his opinion, it will not be detrimental to the usefulness of the whole work or to the usefulness of any extensive section of the whole work, he shall, as far as practicable, locate the ditch on division lines between lands owned by different persons; and he shall, as far as practicable, avoid laying the same diagonally across lands, but he shall not sacrifice the general utility of the ditch to avoid diagonal lines.

Where a more feasible outlet will be had the engineer may, with the approval of the board or court first obtained, shorten or extend the ditch from the outlet described in the petition far enough to effectuate the purpose sought, and where more economical or

better results will be accomplished, provide for different parts of the drainage to flow in different directions with more than one outlet, and in all such cases the viewers shall assess benefits and damages to such additional lands. It shall not be necessary for such ditches to connect if they embrace the drainage area intended to be affected by the petition instituting the proceedings. Where no practical outlet can be had but through the lands of an adjoining state, he shall procure a description of the necessary right-of-way and probable cost thereof and estimate the cost of constructing an outlet through the same. Provided further, that if in any pending proceedings an engineer has been appointed to make a survey as contemplated by chapter 44, General Statutes 1913, and said engineer has made such survey but has not filed his report, the preliminary survey provided for in this act shall not be required.

In making a survey the engineer shall fix and establish suitable bench marks upon permanent objects not more than one mile apart along the side of the line surveyed, so that the same will not be destroyed in constructing the system and carefully note the location thereof in his field book.

The engineer shall enter all field notes made during the survey and construction into a field book properly ruled, make a complete and accurate map and profile of the drainage system as surveyed by him upon good tracing cloth; such map shall be drawn to a scale, show the number of the section, township and range in which the lands affected are situated, the division of such lands into farms, the number of acres, and the names of the owners thereof, the location of the buildings thereon, each station number in figures, location of the bench marks, the public streets, highways and railroad right-of-way affected, the names of the county, township and municipality in which such lands or any part thereof are situated, and all other matters necessary to the understanding of the board or of the court. The profile shall be drawn on a scale, show the elevation, grade, depth of cut, size of tile, and the elevation in figures of each branch and lateral at its source and outlet. When the work of construction is completed, or when for any cause the engineer ceases to longer act as such he shall cause the original maps, profiles, and field books to be filed, in the office of the clerk or auditor where such proceedings are pending. ('05 c. 230 § 4, amended '11 c. 384 § 2; '17 c. 441 § 5) [5526]

Change by engineer in starting point, even if not authorized by 1905 c. 230 § 4, was no defense to proceedings to obtain judgment for assessment lien (112-493, 128-823. See, also, 111-255, 126-1074). Notices of first hearing properly posted, and court acquired jurisdiction; it appearing from petition and findings that proposed ditch was wholly located in town in which notices were posted (114-424, 131-476). Authority of engineer to lay out proposed ditch along practicable lines (116-326, 133-971). "Lowest responsible bidder," how determined. Reduction of bid after award (116-484, 134-221). Engineer's supervision of contract (122-504, 142-899). Recovery on bond of preliminary costs (123-438, 143-971; 129-151, 151-897). Engineer's extending ditch beyond limits named in petition (129-212, 152-407). Departure from route petitioned for is allowable where the same or different lands are benefited by the improvement (131-47, 154-619). Engineer's authority to require extra yardage of a sub-contractor in excavating (135-6, 159-1075; 136-274, 161-379). Omission of the cost of bridges (140-377, 168-185). Survey of drainage course, tabulation of construction work and estimated cost (142-301, 172-126; 143-218, 173-408; 143-439, 174-314; 151-444, 187-414; 152-353, 188-1015). Under amended statute, at first hearing all questions of necessity, public utility and benefit are determined (194-402).

6679. Preliminary survey drainage proceedings limited—In all proceedings for the establishment of county or judicial ditches the engineer appointed pursuant to the provisions of Section 5526, General Statutes 1913 [6678], as amended, shall confine his preliminary survey to the drainage area described in the petition unless the court or the board, as the case may

be, from time to time, after hearing upon one week's published and posted notice, with copies thereof mailed to the petitioners and their bondsmen, by order shall authorize extensions of such preliminary survey to include other lands and areas therein described. ('23 c. 334 § 1)

6680. Report of engineer—He shall thereupon make a detailed and complete report of his doings, which shall include all maps, profiles, specifications and matters herein provided for, and submit therewith the necessary plans and specifications and a description of the land over which the ditch or ditches is or are surveyed. Such report shall give the names of assistants and laborers and the time which each was employed by or under him, together with his own time on the work, and every other item of expense by him incurred in and about the said work, and he shall forthwith file such report with the auditor after having subscribed and sworn to the same. All reports, plans, specifications, maps or profiles herein required to be made by the engineer shall be made by him in triplicate and two copies thereof shall be filed by him in the office of the county auditor or the clerk of the district court, as the case may be, one to remain on file and one to be attached to the contract for the construction of the ditch when awarded.

Such engineer, within ten days from the date of the order establishing such drainage ditch, shall file a complete copy of his final report in the proceedings for the establishment of such ditch with the state commissioner of drainage and waters, who shall forthwith file with the auditor or the clerk, as the case may be, his written acknowledgment of the receipt thereof, and such engineer, every two weeks after the beginning of his work and during the time he is engaged in the same until the contract is let, shall make an accurate report of all expenses connected with such drainage project incurred by him or under his direction and file the same with the auditor or the clerk, as the case may be, and under no circumstances shall there be incurred a greater expense on account of such ditch project than the amount of the penalty of the bond filed by the petitioners with their petition for the establishment of such ditch. Such engineer, within ten days after the letting of a contract under the provisions of section 6689 of this chapter, as amended shall file a complete report of the status of said proceeding with the state commissioner of drainage and waters, which report shall be known as "Engineer's Supplemental Report," the same to be prepared and submitted on blank forms to be furnished by the said commissioner for that purpose.

No claim of the engineer for services rendered or expense incurred shall be audited, allowed or paid while he is in default in the making and filing of any of the reports required to be filed by him under the provisions of this section.

It shall be the duty of the court in the case of all ditches established by it to cause all contracts entered into under the provisions of this section to be carried into effect and to cause all ditches and drains so contracted for to be constructed according to such contracts and the plans and specifications of the engineer; and it shall be the duty of the county board in the case of all ditches established by it, in like manner, to cause all such contracts to be carried out as above provided. ('05 c. 230 § 5, amended '09 c. 469 § 3; '17 c. 441 § 6; '21 c. 508 § 3) [5527]

129-154, 151-899; 137-269, 163-511; 138-207, 164-816; 142-302, 172-126.

6681. Viewers—Meeting—Duties—At the session of said county board, when said civil engineer is appointed, or at such time thereafter as may be appointed by them, not later than ten days thereafter, said board

6680
167-M 1
208-NW 41

6681 - 82
157-M 500
196-NW 666

shall make an order appointing three resident freeholders of the county not interested in the construction of the proposed work, and not of kin to any of the parties known to be interested therein, as viewers to meet at a time and place to be specified by the county auditor as hereinafter provided, preparatory to commencing their duties as hereinafter specified. It shall be the duty of the county auditor, within five days after the filing of the engineer's report, to make an order designating time and place for the first meeting of the viewers, which time shall be within fifteen days after the filing of the engineer's report, and it shall further be the duty of the county auditor, within five days after the filing of the engineer's report, to issue to said viewers a certified copy of the petition and of the order of the county board appointing them, and of his order designating the time and place of their first meeting. In case any of the viewers so appointed shall fail for any cause to qualify in time for the first meeting, the county auditor shall designate some person having the qualifications above stated to take his place. The viewers after taking the oath to faithfully perform their duties, shall proceed at the time set in said order, with or without said civil engineer, and shall prepare a tabular statement showing, as far as practicable, the names of the owners of each tract of land to be benefited or damaged; the description of each tract benefited or damaged (said names of owners to be the same as appears on the county tax duplicates of said county, and the description to be given in legal form), and the total number of acres in each of said tracts of land to be benefited or damaged (as the case may be); the number of acres added to any tract by the total or partial drainage of any meandered lake, or by the change of any watercourse, and the location and value of such added land; the damage, if any, to riparian rights pertaining to any tract; and the amount that each tract of land will be benefited or damaged by the construction of said work. When any ditch established under this act drains either in whole or in part any public or corporate road or railroad, or benefits any of such road so that the roadbed or traveled track of any such road will be made better by the construction of such ditch, the viewers shall estimate the benefit arising therefrom to such roads, roadbeds or railroads, and report said benefits (names of roads and other particulars necessary to identify the corporations, private or public, to be benefited thereby, and amounts of benefits to each) as a part of their tabular statement provided for in this section; and the viewers shall also report as a part of such tabular statement the damages awarded to each municipal or other corporation, and to any person, persons, or association of persons, telephone and telegraph companies, for injury to any road, railroad, or roadbed, telephone or telegraph line or other personal property, and from the necessary construction and maintenance of any bridges, culverts or other works rendered necessary by the establishment of such ditch, stating the same separately; and they shall also report the total estimated benefits in respect to the entire ditch and branches, if any, and also whether or not, in their opinion, the estimated expense of the construction of such ditch, including the damages awarded therefor, are greater than the utility of the proposed ditch, or that the construction of such ditch is impracticable, for any reason, stating the reason why it should not be constructed. In case the viewers are unable to agree each viewer shall state separately in the report his findings on the matters disagreed upon. Whenever a public ditch is located wholly or in part in the bed of a private ditch already or partially constructed, the engineer shall make an estimate of the

number of cubic yards of earth already excavated on each tract of land and the amount of the reduction in the cost of constructing the portion of the ditch on each such tract of land by reason of such private drain having been constructed, and the viewers shall deduct such amount from their estimate of benefits, if any, against such tract of land, making an appropriate notation thereof on their report. ('05 c. 230 § 6, amended '09 c. 469 § 4) [5528]

Viewers and jury must make separate award of damages (122-392, 142+802). Disqualification of viewers as a defense to action on bond (129-153, 151+898). Manner and method of viewers and jury in assessing benefits in drainage of meandered lake (130-178, 153+859). Official position as disqualification of viewer (130-178, 163+513). No manifestation of intent to legislate away police power under this statute (140-1, 167+126; 142-301, 172+126; 152-354, 188+1016).

6682. Assessments—All lands benefited by a public ditch, drain or watercourse, and all public or corporate roads or railroads so benefited, in whole or in part, shall be assessed in proportion to the benefits for the construction thereof, whether said ditches pass through said lands or along or near the line of such roads or railroads or not, and the viewers in estimating the benefits to lands, roads or railroads not traversed by said ditch shall not consider what benefits such lands, roads or railroads will receive after some other ditch or ditches shall be constructed, but only the benefits that will be received by reason of the construction of the public ditch as it affords an outlet for the drainage, or prevents the overflowing of or otherwise directly benefits such lands, roads or railroads. All lands owned by the state of Minnesota or any department thereof benefited by such ditch, drain or watercourse shall be liable for such benefit, the same as taxable land; provided, a notice of the filing of a petition and of the time and place of hearing, and a notice of hearing on viewers' report shall have first been served on the state auditor as in the case of individual landowners. The sum of \$5,000.00 for the year 1909 and annually thereafter, or so much thereof as may be necessary to meet all assessments against state lands under this act is hereby appropriated out of the general revenue fund for that purpose. ('05 c. 230 § 7, amended '09 c. 469 § 5; '19 c. 471 § 4) [5529]

142-302, 172+126; 152-354, 188+1016.

6683. Proceedings by viewers who are not to be accompanied by attorney, engineer or interested persons—Said viewers shall forthwith file with the county auditor a report of all their doings and findings in detail, including expenses and the actual time they were engaged. They shall in every case completely perform every duty by this act imposed upon them (except in case of a re-reference, as hereinafter provided), within thirty days from the date of their first meeting; provided, that if the water be so high, or the weather so inclement, or such unavoidable accidents occur as in the opinion of the board of county commissioners to practically and reasonably prevent them from so doing, the necessary delay caused thereby may be excused by such board; but the report of said viewers must in such case state the reason for such delay, and if such reason be not deemed sufficient by the board of county commissioners such viewers shall forfeit one-half of the compensation hereinafter provided. No attorney, engineer or any other person interested in the ditch shall be with the viewers while they are considering and determining the assessments of benefits and damages to be fixed by them. ('05 c. 230 § 8, amended '17 c. 441 § 7) [5530]

152-354, 188+1016.

6684
160-M 387

6684. Final hearing—Notice—Rehearing—Reassessment—Change of course—Within three days after the filing of such report it shall be the duty of the auditor

6684
157-M 113
195-NW 781
200-NW 471
201-NW 413

to call a special meeting of the county board by giving to each member thereof not more than thirty-five days' notice in the manner provided by law for notifying county commissioners of special meetings. He shall also cause a notice of the time and place of such special meeting to be given to all persons interested by publication for three successive weeks prior thereto, in a newspaper printed and published in said county, and by the posting at least three weeks before such meeting of printed copies thereof in three public places in each township where the proposed work is located, and one at the door of the court house in said county, which notice shall briefly state the pendency of said petition, and shall state that the engineer's report and viewers' reports have been made and filed therein, and shall state the time and place set for a hearing thereon, and shall state the starting point or points of said ditch and branches, the terminus or termini thereof and the general course of the same, and such notice shall further describe or designate the governmental sections of land over which such ditch or branches or any part thereof is surveyed, all as the same appears or is shown by the said report of the engineer, and such notice shall further give the names of the owners of the lands and the names of the municipal corporations and other corporations that will be affected thereby, as the same appears in the report of the viewers; and within one week after beginning such publication the auditor, in case of a county ditch or in case of a judicial ditch, the clerk of the district court shall mail a printed copy of said notice to all persons or corporations whose lands are affected by said proposed ditch as shown by the said viewers' report, whose address is known to such county auditor in case of a county ditch or to the clerk of the district court of the county wherein such drainage proceedings were instituted in case of a judicial ditch, or can be ascertained respectively by such auditor or clerk by inquiry at the county treasurer's office of the county wherein such land is situated; provided, that in all cases in which, for any cause, said notice shall not be given, or in case said notice shall be legally defective, the county auditor or clerk of court as the case may be, shall cause the same to be again given, so that the petition and engineers' and viewers' report and final hearing thereon may be heard at another special, adjourned or regular meeting of said board, which will occur more than seven days after the expiration of another notice by the publication, posting and mailing, as provided in the first instance.

Provided further, that whenever any final order of the county board or judge of the district court, establishing or refusing to establish any ditch in proceedings under this chapter shall have been heretofore or shall be hereafter set aside, annulled or declared void by any court by reason of a failure to give proper notice of the said pendency of said petition and viewers' report or of the time and place set for the hearing thereof, or for any other reason, the county auditor in case of a county ditch, or the clerk of the district court in case of a judicial ditch, at any time within one year after the rendering of such judgment or decision, upon the application of any petitioner in such case, or upon being directed by resolution of the county board shall call a special meeting of such county board for a rehearing on such petition and viewers' report, and shall give notice of such meeting and rehearing in the manner hereinbefore provided, and at such meeting the said county board shall proceed to reconsider such report, shall act upon the same and make findings thereon and may establish such ditch in conformity with the provisions of this chapter.

Upon due publication, posting and mailing of the

notice provided for in this section, the county board, in case of a county ditch, or, in case of a judicial ditch the district court and the judge thereof, shall have jurisdiction of each tract of land and of each public highway and of all other property in said viewers' report described, including any land added by the drainage of any meandered lake or the change of any watercourse and of each tract of land described in said notice or included in the governmental sections designated or described in said notice, and of each tract of land owned by any of the persons or private corporations whose names appear in said notice, that is affected by the proposed ditch or drain, and of all persons and corporations, municipal and otherwise, that are named in said notice, and of all persons and corporations having or owning any interest whatever in, or any mortgage lien or other lien or incumbrance against any of the tracts of land or other property heretofore in this paragraph referred to.

Said county board, in case of a county ditch, or judge of the district court in case of a judicial ditch, shall thereupon at the time and place fixed in the notice of final hearing or at any adjournment thereof, proceed to consider the petition for such ditch and consider the engineer's report and the viewers' report therein, and hear and consider the testimony adduced of all parties interested, and the testimony of the viewers and engineer if offered, and other admissible testimony. At such final hearing the engineer or his deputy or assistant, and at least two of the viewers shall be present, unless excused by such county board. Such hearing may be continued or adjourned from time to time as shall be found necessary by such county board.

If, at such final hearing it shall appear to the satisfaction of such board or district court or judge thereof, from all evidence adduced or from such viewers' or engineer's report, or either or all of the same, that the general system of said proposed ditch as surveyed and reported by such engineer, may be improved by the addition of other branch ditches connecting therewith, or by a change in the course or dimensions of either the main ditch or any branches thereof or by the elimination of one or more such branches; or if it shall appear to said board or district court or judge thereof at such hearing that the viewers have made unequal or improper assessments affecting any of the property or persons assessed, or have awarded benefits in an unequal or improper proportion to any such parties, then and in either such case the said county board or judge of the district court, as the case may be, shall have authority to forthwith amend or correct such viewers' or engineer's report or both as the case may be, or to make findings in relation thereto or to either of the same as shall be required by such evidence or such report or reports, and shall have further authority if deemed advisable to resubmit such matter to the engineer or to such viewers for immediate consideration, and shall have authority to order such viewers or such engineer, as the case may be, or each of the same, to proceed forthwith and summarily to consider the said matter and to make such change or changes in such proposed ditch system, or in the location, course, number or dimensions of the branch ditches, or in relation to the amount of the benefits or damages, or both, respectively awarded, or in relation to the course or dimensions of such main ditch, or either or all of the same, as shall appear to such viewers or such engineer to be just, reasonable and necessary, and as shall appear to be required by such evidence; and thereupon such viewers or such engineer, as the case may be, shall forthwith proceed to reconsider such matters, and, at such final hearing or at such time thereafter as shall be fixed and determined by such county board; or

judge of the district court, as the case may be, shall in writing recommend such amendments to such respective engineer's report or viewers' report, as the case may be, as shall be necessary to make same just and reasonable, and as shall appear to be required by such evidence; such findings and such amendment or amendments shall thereupon be and become a part of such original report, the same as if originally filed therewith, provided that land not included in the original viewers' report shall not be included and assessed in any amended viewers' report or at such final hearing without publishing and posting new notice of hearing. At such final hearing and after such amendment or amendments are made to such report the county board or district court or judge thereof may further hear and consider all evidence offered and admissible concerning such report or reports as amended, and may determine accordingly.

If the county board, or district judge, as the case may be, from the evidence, considers it necessary or advisable for the engineer or viewers to re-examine the course of the said proposed ditch, or of the lands to be benefited or damaged thereby, or if other lands not included are desired to be assessed, then and in that case, or either of them, the said county board shall have authority to resubmit the same to the said engineer or viewers, or both thereof, as the case may be, and order such re-examination, and in such case the said viewers and the said engineer shall proceed to re-examine the course of the said ditch or of lands affected thereby and shall within thirty days after such resubmission file with the county auditor, or clerk of the district court in case of a judicial ditch, their amended report. New hearing shall thereupon be had, and such county auditor, or clerk of the district court, as the case may be, shall forthwith proceed to publish, mail and post like notice thereof as is required in case of filing of and hearing on original viewers' report. For the purposes of making such re-examination the said engineer and the said viewers shall have the same authority in all respects as was possessed by them and each of them in the matter of examining and viewing for the purpose of making original reports therein. At such final hearing in case of a judicial ditch or at any time thereafter upon petition of one or more parties interested therein, and upon such notice as shall be fixed by the judge of the district court, the judge of the district court shall divide and apportion among the persons entitled thereto by law the bed of any lake or lakes drained or to be drained in any such ditch proceeding. ('05 c. 230 § 9, amended '07 c. 367 § 21; '11 c. 384 § 3) [5531]

If by lateral or side drains subsequently to be recommended and provided for by viewers and engineers work is extended into adjoining towns, notices of second hearing must be posted in such towns (114-424, 131-476). Rehearing of a petition and report when final order is void (124-495, 145-380). Determined as to whether meandered lake was subject to drainage under this statute (128-70, 150-209; 129-155, 151-899). Elimination of branches as an improvement of proposed drainage project (130-178, 153-859). Necessity of new notice only as to additional lands (137-266, 161-714; 163-510). Not mandatory upon county board to swear witnesses (139-315, 166-339). Apportionment and partition of bed of a meandered lake may be made at the final hearing without a petition and notice (142-350, 172-224). Notice of preliminary hearing (143-439, 174-314).

See also 138-207, 164-815; 141-440, 170-592; 142-494, 171-922; 140-175, 167-548; 140-23, 167-122; 148-349, 182-168; 150-122, 184-677.

As to branch ditch (152-352, 188-1015).

6685. Confirmation of viewers' reports—If such county board or district judge, as the case may be, from the original, or if amended, then from the amended report of said engineer and viewers, and from such other evidence as may be adduced before them, shall find that the engineer's report and the viewers' report have been made, and all other proceedings in the mat-

ter have been had and taken, in accordance with the provisions of this act, and that the estimated benefits to be derived from the construction of the said work are greater than the total costs, including damages awarded, and that such damages and benefits have been duly awarded and assessed, and that said work will be of public utility or benefit, or will promote the public health, and that such reports are complete, just and correct, then such board or judge of the district court shall by an order containing such findings, establish such ditch as specified in the original, or if amended, as specified in the amended report of the civil engineer, and shall by such order establish, adopt and confirm the original, or if amended, then the amended viewers' report. In case a majority of the viewers have not agreed or shall not agree in their findings, the county board or district judge, as the case may be, shall determine the proper findings and amend and adopt or confirm the viewers' report accordingly.

Provided, however, that in event the final hearing on any ditch petition and the engineer's and viewers' reports came on to be heard before the county board or the judge of the district court, as the case may be, between April 6, 1917, and November 11, 1918, and an order was thereafter made refusing to establish said ditch, or dismissing the petition, that the said proceeding may be revived and the matter brought on for hearing de novo at any time within two years from the passage of this act by the following procedure: A new petition and bond, as required by section 5525, General Statutes Minnesota 1913, as amended by chapter 441, section 4, General Laws of Minnesota for 1917, and referring to the engineer's and viewers' reports in the said proceeding and requesting that the said reports shall be brought on for hearing de novo shall first be filed in the same office as the original petition and bond were filed, thereupon the board or court having jurisdiction in the first instance, shall be reinvested with jurisdiction in the matter the same as if the said proceeding had never been brought on for hearing and dismissed, and the said board or court shall thereafter, and within ten days after the filing of said petition, order notice of the final hearing to be given as provided by section 5531 of the General Statutes of Minnesota for 1913. At such final hearing the board or court, as the case may be, shall proceed to hear and determine said matter de novo. ('05 c. 230 § 10, amended '11 c. 384 § 4; '19 c. 471 § 5) [5532]

Order must locate ditch giving proper starting point, route, and terminus (107-87, 119-502). Board is limited in final order establishing ditch to description in petition subject to reasonable departures necessary to render improvement of practical utility. Extension for seven miles beyond terminus named in petition unauthorized (100-85, 110-355). Although it is not decided that the amendment to this section is utterly void, still insofar as same directs a revival of the proceedings denied on the merits and provides for a hearing and determination de novo, it is invalid and unconstitutional (148-348, 182-168; 125-325, 146-110). Benefits in excess of costs, collateral attack (129-151, 151-897; 134-436, 159-758; 136-146, 159-965). Estimated benefits to exceed total costs (140-177, 167-549; 140-233, 167-1042). Purpose to drain lands within city or village (140-177, 171-311; 152-354, 188-1016).

6686. Damages, how paid—When damages are awarded to any person, persons or corporation, and the same shall have been duly confirmed, the county board of each county in which any of the lands for which such damages are awarded are located shall order the same paid out of the treasury of such county, on warrants to be drawn and attested by the auditor and signed by the chairman of the board. Such warrants shall be issued at the expiration of the time for appeal in favor of such persons as shall not have appealed, and shall be dated and become due and payable immediately after the letting of contract of construction of such ditch. In case of appeal, or in case of

6685
5-NW 625

6685
5-M 74

any postponement or delay in determining the amount of damages due to any person or corporation, warrants in favor of such person or corporation shall not be issued until the final determination thereof. When the award is confirmed by order of court, it shall be the duty of the clerk to immediately transmit to the county auditor of each county affected thereby a certified copy thereof, and likewise of any final order or judgment thereafter made in the case of any appeal or jury trial; and thereupon the same duty shall devolve upon the county board and auditor as hereinbefore provided. Whenever an award shall have been finally confirmed it shall be the duty of the county board of the county in which the lands in respect of which such award was made are located to cause to be forthwith paid to the owner of such property all damages awarded, with interest at the rate of six per cent per annum, from the date to which such assessment relates to, the date of such payment. If in any case there shall be doubt as to who is entitled to the damages for land taken, such board may require of the claimant a bond, with good and sufficient sureties, to hold the county harmless from all loss, costs and expenses, in case any person should thereafter claim and show himself entitled to any part of such damages. ('05 c. 230 § 11, amended '11 c. 384 § 5) [5533]

Separate award of damages (122-394, 142+802; 131-375, 155+626; 141-488, 170+595; 152-357, 188+1017).

6687. Proceedings on appeal—Any person or corporation aggrieved thereby may appeal from an order of the county board made in any ditch proceeding and entered upon its records, determining either of the following matters:

First: The amount of benefits to any tract of land or owner of any public or corporate road or railroad.

Second: The amount of damages allowed to any person, persons or corporation or assessed to any tract of land.

Third: Refusing to establish such proposed ditch.

Any person so appealing on the first or second ground may include and have considered and determined benefits or damages affecting lands other than his own in such ditch proceeding.

He shall specify in his notice of appeal the particular land and the assessment appealed from, and such notice of appeal shall be served upon the owner or occupant of such land or upon the attorney who represented such owner in the proceedings before the court or board. In case such owner has made no appearance by attorney or otherwise in such ditch proceeding, then said notice of appeal shall be served upon the clerk or auditor where said proceedings are pending.

To render such appeal effectual such appellant shall file with the county auditor within thirty days from the date of such final order a notice of appeal which shall briefly state the grounds upon which such appeal is taken, accompanied by an appeal bond to the county board with sufficient surety in not less than \$250.00 to be approved by the auditor of the county in which such appeal is taken conditioned that said appellant will duly prosecute the appeal and pay all costs and disbursements that may be adjudged against him and to abide the order of court. Within 30 days after such filing the auditor shall make a complete transcript of all the papers and proceedings on file and of record in his office so far as the same pertain to the premises or matter on account of which the appeal is taken, together with the notice of appeal, and file the same in the office of the clerk of the district court of the county. For such services the auditor shall receive the sum of \$3.00.

Any person deeming himself aggrieved in a county or judicial ditch proceeding by an order of the county

board or the court, as the case may be, determining the amount of his benefits or damages, or the benefits or damages assessed upon lands other than his own as hereinbefore provided, may demand a jury trial to determine the amount of such benefits or damages, as the case may be, on account of the construction of such ditch. Such demand shall be in writing, signed by the party making the same, or by his agent or attorney, and with a copy of the proposed bond shall be served upon the attorney for the petitioner, if any, and if not, then upon the county attorney of the county wherein proceedings were instituted and the original bond and notice, with proof of service as herein required, shall be filed in the office of the clerk of the district court within and for the county in which the proceeding is pending within 20 days after the filing therein of the order confirming the report of the viewers. In a judicial ditch proceeding such demand shall be accompanied by a bond in the sum of at least \$250.00 with sufficient sureties to be approved by the clerk of the district court wherein such proceedings were commenced, said bond to be conditioned that demandant will pay all costs and disbursements adjudged against him and further conditioned to abide the order of the court therein. The issues raised by such demand shall stand for trial and shall be fully tried and determined at the next term of the district court held within the county in which such proceedings were commenced, or in such other county in which such trial shall be held as hereinbefore provided, beginning after the filing of such demand, and shall take precedence of all matters of a civil nature in said court. If there be more than one demand triable in one county, they may be consolidated and tried together, but the rights of such demandants shall be separately determined by the jury in its verdict. If the demandant or appellant fails to recover more damages than awarded to him or fails to reduce the amount of benefits assessed against his land, then the costs of such trial shall be paid by the demandant or appellant as the case may be. The construction of any such ditch shall not be hindered, delayed or prevented by the prosecution of any appeal or demand herein mentioned. In case of demand for a jury trial as to assessments of damages or benefits to land situated in a county other than the county wherein such ditch proceedings were instituted and are pending, and in case such demandant for jury trial so requests in such demand, such trial as to the land situated in such other county shall be held at the next term of the district court of the county wherein such lands are situated, and in such case the clerk of the district court where such demand is filed shall make, certify and file in the office of the clerk of the district court of the county where such trial is to be had a transcript of the papers and documents on file in his office in such proceeding so far as pertain to the matter on account of which said appeal is taken. After such trial the clerk of the district court of the county where such action is tried shall make, certify and return the verdict of the district court of the county wherein such proceedings were instituted, and such verdict or order shall be entered and enforced as a part of the proceedings in such last mentioned county. ('05 c. 230 § 12, amended '11 c. 384 § 6; '17 c. 441 § 8 [5534])

Certiorari available to review order establishing a ditch; no appeal order being provided (106-197, 118+1014). Where landowners, not served with notice nor named, and whose lands were not referred to, remonstrated on ground that water would be brought in damaging quantities on their premises, they were not restricted to appeal, but might resort to injunction (101-271, 112+274). The appeal is not limited or affected by § 5543 (111-10, 126+479). Where trial of appeal from assessment of benefits is had in district court of county other than that in which proceeding was instituted, verdict of jury

25 — 6687
156-M — 263
200-NW 99
471
6687
400
621

or order of court in such trial is final determination in that court, and no judgment thereon is necessary (116-424, 133-1010). Burden of proof, on appeal from assessment (116-424, 133-1010).

Cited (115-440, 132-749. See 119-392, 138-675). Orders appealable are, besides drainage of a meandered lake, those determining benefits or damages, or refusing establishment of ditch (128-70, 150-209). Refusal to establish ditch, if public utility, ground for appeal and trial de novo (129-155, 151-899; 130-178, 153-859; 131-373, 155-626). Demand for jury upon statutory conditions, and dismissal when reviewable (133-113, 157-1004; affirmed by, 134-290, 159-629; 142-178, 171-564). Sufficiency of notice of appeal (151-285, 186-715). Final order subject to appeal and not certiorari (194-403).

6688. Consolidation of appeals—If more than one party appeals, the court may, in his discretion, order the cases consolidated and tried together; in such case the right of each party shall be separately determined. ('05 c. 230 § 13) [5535]

6689. Awarding of contract—Within ten days after the filing in the office of the auditor or clerk, as the case may be, of the order establishing a ditch or drain, the auditor, chairman of the county board and the clerk of court, or a majority of them in the first instance, and in the second instance, the auditors of the respective counties meeting for that purpose at the office of the auditor of the county in which the proceedings are pending with the chairman of the county board and clerk of court of said county, or a majority of them, shall proceed as hereinafter provided, to sell the job of digging and constructing the entire work either as one job or in one or more linear sections of 100 feet each, each of said sections to be known and numbered by the stake or monument set by the engineer at the foot of each such section as shown in the engineer's report, commencing at the one, including the outlet and thence in succession up the stream to the one including the source. The auditor or auditors, as the case may be, together with such chairman of the county board and clerk of court, or a majority of them, may with the approval of the engineer, sell separately from the jobs of excavation, any jobs of building of flumes or other wood or masonry work, fencing or other construction work specified in the engineer's report. The auditor or auditors, as the case may be, with such chairman and clerk, or a majority of them, may if deemed for the best interests of all concerned, let a separate contract for the furnishing of material for the construction of such system. The auditor or auditors, as the case may be, with such chairman and clerk, or a majority of them, shall contract in the name of the county or in the name of the respective counties, as the case may be, each acting by and through its auditor, chairman and clerk, with the party to whom any of such jobs of construction work or any section or sections is or are sold, requiring him to construct the same in the time and manner and according to the specifications, provisions and form of contract upon which the ditch is established, and shall take from him a bond in the penal sum of not less than 75% of the entire contract price with sufficient surety payable to the county or to the respective counties, or any two or more of them, as the case may be, for the use of such county or counties, as the case may be, and also for the use of all persons who may show themselves to be aggrieved or injured by any breach thereof, or of the contract for which such bond is given; to be by said auditor or auditors, and such chairman and clerk, approved, conditioned that such party shall faithfully perform and fulfill his contract, and pay all damages which may accrue by reason of the failure to complete the work in the manner and within the time required in the contract therefor, and otherwise conditioned as in this act provided, which bond shall include a stipulation that no change, extension, alteration or addition to the terms of the

contract or specifications shall in any wise affect the obligation of the principal or principals or surety on said bond. The auditor of the county in which the proceedings were taken shall give notice of the letting of such contract by publication for three successive weeks in the official paper of such county of the time when and place where such contracts shall be let to the lowest responsible bidders; and in such notice shall state the approximate amount of work and the estimated cost and shall invite bids for the work as one job, and also for any one or more of such sections or any one or more of such construction jobs, and if a separate contract for the furnishing of material shall be deemed advisable such notice shall contain all matters hereinbefore specified, so far as applicable, and a statement of the kind and size of tile, the number of lineal feet of each size required, and the general specifications of all other materials required, the estimated cost thereof, the time within which the same are to be furnished, with such other matters as he may deem proper for the information of bidders. He shall reserve the right to reject any and all bids and no bid shall be entertained which exceeds more than thirty per cent of the estimated cost of the construction of the part of said work covered by said bid; nor unless accompanied by his certified check payable to the auditor or to the respective auditors, as the case may be, for not less than ten per cent of the bid; and said auditor and auditors, chairman and clerk, may adjourn such letting from time to time until the whole work shall be taken and with the approval of the engineer may let any one or more of such sections or any one or more of such construction jobs. When the estimated cost of the construction is more than \$3,000.00, the auditor may also advertise such letting in a trade paper. If no bids are received which can be entertained, the bondsmen for the petitioners may have the right at any time to pay the costs of the proceedings, and dismiss the same. The engineers shall attend to the letting of the work, and no bid shall be accepted without his approval, as to the compliance with plans and specifications. ('05 c. 230 § 14, amended '15 c. 300 § 2; '17 c. 441 § 9) [5536]

Action lies by contractor against county to reform contract, by causing engineer's estimate of cubic yards to conform to number actually excavated as required by plans. "Estimate" of engineer was not basis of bid, and 30 per cent limitation did not apply (112-5, 127-396). Requirements as to filing of certified check with bid held sufficiently complied with (116-484, 134-221).

Cited (117-50, 134-226). Validity of county ditch contractor's bonds (125-213, 146-359; 131-243, 154-1092; 133-56, 157-902).

6690. Provisions of contract and bond—Extensions—The bond and contract shall be attached to each other and the contract shall contain the specific description of the work to be done, either expressly or by reference to plans and specifications, and refer to the number of the section or sections, as provided for in the preceding section and shall provide that the work shall be done and completed as provided for in the report of the engineer, and subject to his approval and that of the auditor or auditors, as the case may be.

Such contract shall be drawn to the satisfaction of the engineer and the county attorney. Every such contract and bond shall embrace all the provisions provided by law for the giving of bond by contractors for public works and improvements and for the better security of the contracting county or counties and of the parties performing labor and furnishing material in and about the performance of such contracts and shall provide that time shall be the essence of the contract, in that if there should be any failure to perform the work according to the terms of said contract, within the time limited therein, originally or by extension,

6689
25 — 263

6690-91	70
168-M	20
171-M	30
213-NW	
6690	
166-M	49
207-NW	64
208-NW	526
209-NW	644

the contractors shall forfeit and pay to the county in which the portion of the work in default shall be located, a certain sum, to be named therein, and which shall be fixed by the county auditor or auditors, as the case may be, for each day that such failure shall continue.

The bond shall expressly provide that the bondsmen shall be liable for all damages resulting from any such failure, whether the work be resold or not, and that any person showing himself injured by such failure may maintain an action upon such bond in his own name and that such actions may be successive in favor of all persons so injured. Such contractor shall be considered a public officer and such bond an official bond within the meaning of the statutory provisions construing such official bonds, of public officers as security to all persons and providing for action on such bonds by any injured party in the district court.

No extension of time shall be granted by the auditor or auditors, as the case may be, unless applied for in writing to the auditor or auditors, as the case may be, stating to his or their satisfaction good and sufficient reasons therefor; nor shall any extension affect the right to enforce such forfeiture, if any, as shall occur after the time originally limited and before such extension, or accruing after the limit of the extension. One such extension may be made for a period of time not exceeding one year without notice.

No extension after the first above provided for, shall be granted until a hearing upon such application shall be held after such notice as hereinafter provided. In such case, the auditor of the county wherein such drainage proceedings were instituted, shall cause to be prepared and published as hereinafter provided, a brief notice setting forth the filing of such application and setting forth the time and place when and where the said application will be heard, considered, and determined by such auditor or auditors, as the case may be. At the time and place so designated the said auditor issuing such notice and if present such other auditors upon whom service of such notice is herein provided for, shall proceed to hear, consider and determine such application and shall make written order in relation thereto.

Such notice of hearing shall be published for two successive weeks prior to such hearing in each county affected by such drainage proceedings in the newspaper therein duly designated to publish the delinquent tax list for such year, and shall be served upon the county auditor of each such county so affected. The expense of such hearing and the publication and service of such notice shall be paid by such contractor applying for such extension.

Provided, that whenever tiling is used in the construction of any ditch or drain or any part thereof and the petition for said drain so requires, or at any time previous to the commencement of advertising for the sale of the job or jobs for the construction of the same upon a request of a majority of the petitioners in writing therefor, filing with the county auditor of the proper county, such contract shall require the contractor of the whole tile work or the contractor of any part thereof, as the case may be, to guarantee all of such tile work done by any such contractor for a period of three years after the completion of any such contract, against any fault or negligence on the part of any such contractor and any failure during said period of any part of said tile work constructed by any such contractor, to accomplish the purpose of drainage for which it was intended, shall be prima facie evidence that the same is due to the fault or negligence of said contractor. Notice of such request shall be given by

the county auditor in the advertisement for sale of such job or jobs.

The said contractor shall give a good and sufficient bond for the performance of such undertaking and contract. The acceptance of such tile ditch by the engineer or county board shall not relieve or exempt said contractor or his bondsmen from the liability therein imposed on said contractor for said three-year period.

Provided further, that at the end of each year of each season's work, after giving such contractor's bond, and prior to the completion and acceptance of such job of construction the contractor may make verified application to the county board in case of a county ditch, or in case of a judicial ditch, to the judge of the district court of the county where the proceedings were instituted, setting forth approximately the total yardage of excavation completed and total amount of other work completed, the contract price thereof and the value of the work theretofore certified as complete by the engineer, and the amount of money received by contractor, and further setting forth the amount then owing or unpaid by said contractor for labor or material already furnished in the matter of the completion of such contract, and asking an order reducing the amount of the contractor's bond.

Upon the receiving such application, the said judge of the district court or the said county board, as the case may be, shall proceed to hear, consider and determine said application upon such notice as shall be directed by such judge or by such county board respectively, and if upon such hearing, it is determined that no loss will result thereby, the said judge or the said county board may by order reduce the penalty of such bond to such a sum as shall be deemed advisable by such judge or such county board, as the case may be, but such reduction shall in no case exceed by more than twenty-five per cent the amount already paid to the contractor, and such reduction shall not affect the validity or the enforcement, or in any manner otherwise affect the remaining amount of the penalty of such bond. ('11 c. 384 § 7, amended '13 c. 578 § 1; '17 c. 441. § 10) [5537]

A bondsman completing the work upon default of contractor cannot avail himself of defense in action by material man that same was not completed and accepted (133-56, 157+902; 133-91, 157+999; 137-100, 162+1055).

6691. Failure to complete—Reletting—If a job be not completed within the time fixed in the contract therefor it shall be the duty of the bondsmen to notify the county auditor of each county in which any part of the lands affected thereby is located, in writing, of that fact, within five days after the expiration of the time fixed in the contract; whereupon the auditor, or auditors, as the case may be, shall, in writing, duly dated, order said bondsmen to complete said job within a time specified by him or them, and said bondsmen shall receive from the proper county or counties, as the case may be, the amount due on such job or part thereof, that they have so completed, less the proper deduction for forfeiture, if any. The amount due said bondsmen for such work shall be determined by said engineer; provided, that a job not completed, as hereinbefore specified, by the original contractor, and the completion of which shall not be undertaken by the bondsmen as hereinbefore provided, within ten days after the date of such order, or of the failure to complete, which, the bondsmen shall not so notify said auditor, or auditors, as the case may be, shall be resold by the auditor, or auditors, as the case may be, after ten days' notice by publication, to the lowest responsible bidder, but not for a sum exceeding fifty per cent in excess of the original estimated cost of such work, nor a second time to the same party. A con-

6691R
220nw 432

tract and bond shall thereupon be entered into as hereinbefore provided, and such contract shall provide for the completion of the work resold within six months from the date thereof. Such excess, if any, shall be recoverable against the bondsmen on the original contract. ('05 c. 230 § 16) [5538]

A judicial ditch substantially completed, not abandoned, where engineer refuses to accept ditch, and contract money is withheld by county, benefited landowners are not entitled to refund of paid, and vacating of unpaid, assessments (145-496, 175+997).

6692. Reinstating and extending contract—Whenever the county auditor of any county of this state has heretofore let a ditch contract and the date for the completion of such contract has been extended one year by the said county auditor and such county auditor has declared said contract forfeited and has re-advertised for bids for the completion of the ditch covered by said contract and no bids have been received in response to the advertisement, the said county auditor may, and he hereby is authorized to reinstate the original contract and to extend the same for one year from the date when it was declared forfeited. ('13 c. 22 § 1) [5539]

6693. Agreement of contractor—Such reinstatement and extension shall not become effective unless the contractor shall agree in writing to comply with all the provisions contained in the original contract. The bondsmen shall also be notified of the contemplated reinstatement and extension and if they assent thereto in writing shall be obligated as fully as under the original contract. In case the bondsmen shall refuse to approve such reinstatement and extension a new bond shall be required in such sum as the county auditor shall require, to be approved by the auditor. The provisions hereof shall not, however, be construed as relieving the original bondsmen from any obligation because of any failure of the contractor to comply with any of the conditions of the original contract; provided, that this act shall not be construed so as to affect any action or proceeding now pending in any of the courts of this state. ('13 c. 22 § 2) [5540]

6694. Inspection and report—Payments—It shall be the duty of the engineer on being notified by the contractor that his job is completed, to inspect the same, and if he finds it complete according to the contract, plans and specifications he shall report that fact to the county board or court, as the case may be, and give to the contractor a certificate stating that said section or sections (by number) or other jobs of construction, are completed according to the contract, plans and specifications as set forth in the report of said engineer.

Provided, that when the work for which such certificate is to be issued, affects more than one county, proportionate certificates shall be issued to each county. Upon the filing of such report of the engineer that any ditch or job has been completed, the board or court shall fix a day when it will meet or hear the same, of which meeting ten days' notice by mail shall be given by the auditor or clerk of court to all the land owners whose lands are assessed for benefits by the construction thereof, who are residents of the county, or whose postoffice address is known. Service of such notice shall be sufficient if the same is mailed ten days before the date of such hearing; whereupon, if approved by the county board or court, as the case may be, and upon presentation and surrender of said certificate with such approval endorsed thereon to the auditor or clerk of the proper county, said auditor or clerk shall draw a warrant on the county treasurer of his county, in case of the auditor, and of the separate counties in case of clerk, for the proportionate amount

found to be due from such county on said contract, according to such preliminary certificate, as herein provided; and that said warrant shall be paid out of the general ditch fund to be provided by the county board as hereinafter specified. Said warrant shall become due and payable out of said funds at once, and if there shall be no cash in said fund to pay said warrant when the same is presented the county treasurer shall endorse said warrant "Not paid for want of funds" and date and sign such endorsement, and the amount of said warrant shall draw interest at the rate of six (6) per cent per annum until called in by the treasurer or auditor of said county and paid.

At any time during the progress of the work of construction, the engineer may issue preliminary certificates for work done and approved or for material or supplies furnished and delivered along the line of said proposed ditch, or otherwise delivered according to the contract therefor and to be used for the construction or installment of tile or other enclosed drains or for bridges or culverts along the line of and as a part of said proposed ditch system; which preliminary certificates shall contain the station number or numbers of the work covered by such certificate, the actual yardage of the excavation certified and the total value thereof according to the contract of construction, or in case the same is for material furnished, then an estimate of the total value of such material according to contract. Such certificates shall further show the percentage of such total value of the work or material to be paid by the county or counties, and if the proportion has been fixed by the district court, such certificate shall further show the proportion of such total value to be paid by the respective counties. Such certificate shall be executed in duplicate by the said engineer, or in such number as may be necessary and as many thereof marked "duplicate" shall be delivered to the contractor as there are counties affected, and such engineer shall further file one thereof with the county auditor of each county affected; provided, that except as hereinafter provided, no engineer in drainage proceedings shall by preliminary certificate certify or recommend for payment, and no county auditor shall cause to be paid a sum exceeding 85% of the total value of work done and approved, or exceeding 85% of proceedings wherein the contract of construction has been entered into prior to the passage of this act, before the issuing and delivering of the said warrant to such contractors there shall be filed with the said county auditor the assent thereto in writing of the surety on such contractor's bond, such assent to provide that such payment upon such preliminary certificates shall not in any manner affect or reduce the liability of such surety upon such contractor's bond.

The provisions of this action shall apply to all public ditch proceedings heretofore or hereafter instituted, under any law of this state, except state and township ditches.

Provided, that no certificate or certificates of partial completion or of furnishing of material shall be furnished or delivered by the engineer unless the said certificate or certificates shall be accompanied by the engineer's written certificate that no loss will result from such partial payment. Provided further, that the county or counties paying a preliminary estimate of the engineer on material furnished or delivered shall have a lien on the said material to the amount of all payments made thereon by such county or counties.

Provided, that the said certificate or certificates of the engineer in the matter of any county or judicial ditch proceedings of any other estimate or certificate required under any of the drainage laws of this state to be made by him, shall not constitute prima facie

6694R
222nw 280
6678R
198-NW 449
6694
164-M 304
6694
59-M 220
05-NW 277
6694
7-M 458
9-NW 638
-G.S. 6718

or other evidence of the truth of the contents thereof, or of the completion of any ditch or any part thereof by the contractor or otherwise, or of the fulfillment of the contract or part thereof.

It shall also be the duty of the engineer to inspect the laying of tile, excavation and all other work of construction from time to time, as provided for in the specifications and provisions in his report and as provided for in the contract for construction, and every thirty days during the progress of the work to report in writing to the county board or the judge of the district court, as the case may be, as to all work completed since the last prior report, and his services for making such inspection shall be paid for at the rate and in the same way as his services in making his original survey and report. ('05 c. 230 § 17, amended '09 c. 469 § 6; '11 c. 384 § 13; '13 c. 567 § 1; '15 c. 300 § 3; '17 c. 441 § 11; '19 c. 471 § 6) [5541]

Proviso of 1905 c. 230 § 17, authorizing partial payments (104-463, 116+941).

Certificate of engineer under 1905 c. 230 held not final and conclusive that contract has been fully performed (112-516, 128+1008).

112-516, 128+1008, to effect that, on refusal of board to approve final certificate of engineer, contractor may bring action on contract to recover balance due, followed and applied (114-448, 131+635).

'23 c. 107 authorizes counties of over 45 and less than 58 congressional townships where warrants were issued prior to January, 1918, and which are "not paid for want of funds" as to a special drainage project, because of deficit, to assess and extend same for general taxation (122-506, 142+899; 123-61, 142+945). Judgment is res adjudicata against tax-payers, public officials and municipality (125-461, 147+448). Statute not unconstitutional (137-409, 163+746). County is agency of state (140-28, 167+114). Engineer's certificate, unapproved, as evidence of completion of ditch (145-239, 176+763). No method is prescribed by statute for review of action of board in refusing approval of engineer's final certificate, and any proper common law remedy is available (148-181, 181+324).

6695. Payment of interest on ditch warrants to be made annually—That in all cases where a warrant has been or shall be issued by the auditor of any county under and pursuant to the provisions of Section 5541 of the General Statutes of Minnesota [6694] for the year 1913 or any other section or act relating to proceedings to lay out or construct any drainage system under or pursuant to the laws of this state and there shall be no cash in the fund therein mentioned to pay said warrant when the same is presented, and the county treasurer shall endorse said warrant "not paid for want of funds," and shall date and sign said endorsement as in said act provided, then and in that event the interest on said warrant therein provided shall be paid on said warrant annually on the 1st day of July in each year until said warrant is called in and paid by said treasurer, or bonds are issued by the county to care for said warrants. Provided, that in all cases where such warrants are issued and no cash is available in the fund upon which said warrant is drawn to pay the same, then the limitation of the right of action upon such warrant shall not begin to run as provided in Section 7701 of the General Statutes of 1913 until cash is available in such fund for the payment of such warrant. ('15 c. 246 § 1, amended '23 c. 362 § 1)

123-61, 142+945; 135-275, 160+766.

6696. Bonds to be issued after lien statement has been filed with register of deeds—The county board of each and every county wherein any drainage ditch is proposed to be wholly or partly located and established, or wherein lands are located which are assessed for benefits by reason of the construction thereof, are hereby authorized after the lien statement prepared by the county auditor has been filed in the office of the register of deeds, to issue the bonds, of their respective counties in such amounts as may be necessary to defray in whole or in part, the expenses incurred or

to be incurred in locating, constructing and establishing or repairing so much of any such ditch as may be located within said county; or in such relation to such county as to affect lands therein within the terms of this act. All such bonds shall be sold and negotiated as provided by section 1856 of the General Statutes of Minnesota 1913 [1943], and not otherwise. The word "expenses" shall be construed to mean and cover every item of cost of said ditch from its inception to its completion, and all fees and expenses to be incurred in pursuance thereof. Such bonds shall be payable at such time or times not to exceed twenty years from their date, and shall bear such rate of interest not to exceed six per cent per annum, payable annually or semi-annually, all as the county board shall by resolution determine. Each bond shall contain a recital that it is issued by authority of and in strict accordance with the provisions of this act, or such bond may be in such form as the state board of investment may prescribe, and shall be signed by the county auditor, who shall keep a record thereof. Said county board shall have power to sell and negotiate said bonds, as hereinbefore provided, but for not less than their par value. The proceeds from the sale of all such bonds shall be placed in a general ditch fund which is hereby created. The county auditor shall keep a separate account with each drainage ditch system, which account shall be credited with all moneys arising from the sale of bonds, all moneys received as interest or penalties or upon liens, charges, assessments and from all other sources on account of such drainage system, and which account shall be debited with every item of expenditure made on account of such drainage system. Such county board shall provide moneys for the payment of the principal and interest of said bonds as they severally mature, which moneys shall be placed in the general ditch fund, into which fund it may transfer any surplus moneys remaining in the general revenue fund or other funds of the county which can be properly used for the purpose of this act, into which fund shall be paid all moneys received from the payment of any liens created under the provisions of this act. And such board is hereby authorized to pay drainage bonds issued under the provisions of this chapter out of any available funds in the county treasury, when the moneys on hand in the general ditch fund of the treasury are insufficient to meet the payment of bonds issued in ditch proceedings when the same mature, but the fund from which such moneys have been taken or used for the payment of bonds as they mature shall be replenished with interest at the rate of six per cent per annum from collections of unpaid assessments, for ditches, drains or watercourses constructed under any proceedings had hereunder.

Except as herein otherwise stated, the provisions of this act shall not affect the rights or liability of any party to any existing contract or any surety on any existing bond, and existing statutes shall be deemed in force as to all such contracts and bonds. ('05 c. 230 § 18, amended '07 c. 367 § 3; '09 c. 469 § 7; '15 c. 300 § 4; '17 c. 441 § 12) [5542]

Bonds direct and general obligations of county (117-50, 134+226).

'23 c. 5 legalizes certain bonds in proceedings under '11 c. 54, as amended '17 c. 441 § 17. Contract by county for sale of its bonds for less than par, is, as between original parties, void, under this statute (145-77, 176+196).

123-61, 142+945; 135-275, 160+766.

6696A. Public examiner to adjust drainage accounts—Upon application of any county in the state, indicated by resolution of the board of county commissioners entered in its minutes, it shall be the duty of the public examiner, in addition to his other duties, to examine into the accounts and records controlling the

drainage projects of the county and establish a system of accounts with each drainage system in the county as required by section 4, chapter 300, Laws 1915.

The expense of the examination and establishment of the accounting system provided for in the preceding section, including the payment of compensation to the examining accountant at not more than eight dollars per day and traveling and hotel expenses, as certified by the public examiner, shall be audited and allowed by the board and paid into the state treasury and credited to the public examiner's contingent fund. ('19 c. 471 § 16)

'21 c. 182 § 1, amended '23 c. 376 § 1, authorizes county board of counties of not less than 95 nor more than 110 full or fractional congressional townships with at any time an assessed valuation of not less than \$6,000,000 and not more than \$12,000,000 to issue re-funding bonds, etc., relating to certain drainage projects.

'21 c. 222, applies to judicial ditch projects pursuant to '05 c. 230, legalizing such contracts, prior to April 8, 1921, under G. S. '13 § 5536 and liens thereunder and providing for the issuance of bonds relating thereto, exempting pending proceedings.

'15 c. 301 legalizes the transfer of moneys, theretofore made, from ditch to revenue fund, and same has not been repaid and validates bonds therefor not to exceed \$25,000, however, providing for specific proceedings as prerequisite to the issuance of such bonds.

6697. Definition—"Drainage ditch bonds" as used herein mean any bonds issued under the provisions of Chapter 230, General Laws 1905, or of any act amendatory thereof or supplemental thereto. ('23 c. 72 § 1)

6698. Application—This act shall apply and be operative in the case of any county which, at any time, shall have paid any of the principal or interest of any of its drainage ditch bonds (1) with moneys in its general ditch fund applicable to a ditch other than the ditch in connection with which such bonds were issued, or (2) out of county funds other than the general ditch fund, or (3) out of the proceeds of county warrants issued and outstanding, and a shortage in respect to the general ditch funds exists by reason thereof, and also in the case of any county where it shall, at any time, appear that the moneys in its general ditch fund will not be sufficient to pay in full the principal and interest of its drainage ditch bonds to become due according to their terms within one year following the date of the county auditor's certificate hereinafter provided for. ('23 c. 72 § 2)

6699. County boards authorized to issue ditch bonds—Interest rate—The county board of any such county is authorized and empowered to issue and sell, from time to time, the county's bonds for the purposes of its general ditch fund. The maximum principal amount of such bonds outstanding in the case of any county shall not at any time exceed the sum of seventy-five thousand dollars (\$75,000.00). Such bonds shall be designated Drainage Funding Bonds or by some other appropriate name. Their issuance shall be authorized by resolution of the county board, and they shall be signed by its chairman and attested by the county auditor, who shall affix his seal. They shall bear interest at a rate not exceeding six per cent per annum, payable semi-annually, and shall mature serially in annual installments, as nearly equal as conveniently may be, the first installment to be payable in not more than five years, and the last installment in not more than fifteen years from the date of said bonds. They shall be sold as provided by § 1856, General Statutes 1913. ('23 c. 72 § 3)

6700. Auditor shall make certificate—Before any bonds shall be authorized or issued under the provisions hereof, there shall be first presented to the county board and entered in its records, a certificate signed by the county auditor under his seal. This certificate shall state (1) the amount which will be re-

quired to make good any existing shortage within the meaning of Section 2 hereof, and (2) the probable amount which will be required to pay the principal or interest of the county's outstanding drainage ditch bonds to become due within one year from the date of such certificate. The certificate shall state such amounts in detail, and shall specify the part thereof which is applicable to each of the several county ditches. Such certificate of the county auditor shall be conclusive evidence that the county has authority to issue bonds under the provisions hereof to an amount not exceeding the aggregate amount specified in any such certificate, and not exceeding in the aggregate the sum of seventy-five thousand dollars (\$75,000), as provided in Section 3 hereof. ('23 c. 72 § 4)

6701. Purpose—The proceeds of any such bonds paid into the treasury shall be placed in the general ditch fund, and applied to the purpose for which they are issued. The county auditor shall keep a separate account with each ditch in connection with which any of the proceeds of any of such bonds are used, and when the collection of assessments on account of such ditch at any time produces a surplus in excess of the obligation on account of such ditch to the general ditch fund, such surplus shall be applied to the payment of the principal or interest of such bonds. ('23 c. 72 § 5)

6702. Obligation of county—Any bonds which a county may issue hereunder, shall be general obligations of the county, but shall not be included in determining such county's net indebtedness under the provisions of any applicable law. ('23 c. 72 § 6)

6703. Statement and summary—At the earliest practicable time after the letting of the contract for the construction of any ditch, as herein provided, the auditor of each county affected thereby shall make in tabular form a list and statement showing the following facts, and in the order named, viz:

First—The names of the owners of all lands and the names of all public or corporate roads or railroads within their respective counties benefited by the construction of such proposed work as appears from the viewers' report, as affected by the order of confirmation of the board or judge, as aforesaid.

Second—The description of said lands as the same appears in such report as so affected, together with the total number of acres in each tract, according to the assessment rolls or tax lists of such county.

Third—The estimated number of acres benefited in each tract of said land, as shown as aforesaid.

Fourth—The estimated amount of benefits and damages to each of said tracts of land and the estimated amount of benefits and damages to each public or corporate road or railroad, as the same appears in such viewer's report, as affected by the order of confirmation of the board or judge as aforesaid, or as changed by the jury or court.

Fifth—The amount that each of said tracts of land, and that each of said corporate roads or railroads so benefited will be liable for and must pay into the treasury of each county for the location, construction and establishment of such ditch, which said amount shall be determined as follows: Said auditor shall make a full statement showing the total cost of each ditch, under each separate petition for such ditch, and each petition and each ditch located, constructed and established shall be known and designated by a number to be given to it. Such statement shall be headed as follows: Statement showing cost of ditch No..... To whom paid..... For what paid..... Amount paid..... Said statement shall be summed up, showing in figures the total cost of each ditch, and shall be attached to and form a part of the statement herein provided for. The total cost shall then be divided by the

6699 - 6700
25 - 198
23-G.S. 1943
6703
25 - 263
6699-6700
- 129
6699
33 - 140
See
668N

6703-05 R
173m 223
217nw 101

total estimated benefits as provided for in subdivision five of this section, for the rate of cost on each one dollar of benefits, the auditor not to be obliged to carry out and use a smaller fraction than one-tenth of one mill. The amount of estimated benefits to each tract of land, and to each public or corporate road or railroad (as hereinbefore provided for) shall be multiplied by said rate, and the result set down in the proper column opposite each of said tracts of lands, public or corporate roads or railroads; and such result so obtained, less the amount of damages, if any, shall be the amount that each of said tracts of land, public or corporate roads or railroads will be liable for on account of such improvement. ('05 c. 230 § 19) [5543]

Duty to file statement is attribute of office of auditor, and not discretionary with person holding office. Delay of four years not fatal. Mandamus to compel filing lies (111-10, 126+479).

See 111-10, 126+479; 135-276, 160+766.

'19 c. 180 legalizes proceedings where contract for construction was let at a cost greater than the benefits to be derived, except pending proceedings.

'19 c. 182. legalizes proceedings theretofore taken, for deepening and extending drainage projects, and validating bonds for same.

6704. Ditch liens—That whenever the engineer in charge of the county ditch proceedings instituted under Section 5523, General Statutes of Minnesota for 1913 [6703] and acts amendatory and supplementary thereto, at the request of the land owner whose land is assessed for benefits for defraying a part of the cost of constructing any such county ditch, has let or caused to be let a contract for the laying of a tile drain or open ditch over and across said land as a part of said county ditch system although not included in the engineer's report thereon, and the cost of doing said work is in excess of 10% of the total original contract price for the construction of said ditch, and said additional ditch has actually been constructed and the person, firm or corporation so requesting such additional ditch improvement to be made shall file in the offices of the Register of Deeds of said County and of the County Auditor of said County within which such improvement is made, a written consent and agreement by the owner of said land and any mortgagee or mortgagees holding mortgages thereon to have such entire cost of such additional improvement assessed as a benefit and to be and to stand as a first, and prior lien until fully paid against said land across which said tile drain or open ditch is laid, including any and all additional engineering expenses required by such additional improvement, in all respects as though said additional improvement had been included in the engineer's report on said ditch and said improvement had been included in the contract awarded by the County Auditor for the construction of said ditch, said County Auditor on the filing in his office of a verified, itemized claim with the engineer's written approval of the correctness thereof, by the party with whom the engineer contracted for the making of said improvement, stating that said improvement has been made according to said contract and the actual cost thereof, is hereby authorized and directed to issue his warrant drawn upon the said county ditch fund in favor of the person, firm or corporation with whom said engineer entered into said contract and who actually performed the work and furnished the material for the making of each additional improvement, for the total cost thereof as set forth in said verified claim. And said County Auditor is further authorized and directed to amend the viewers' report of benefits and damages by assessing as benefits against the land so benefited by such additional improvement, the entire cost thereof, and to amend the orders of the County Board accepting and confirming said viewers' report and ordering the establishment of said ditch, by adding thereto as an addi-

tional assessment against the lands across which said additional improvement is laid, the entire costs thereof, and shall include in the Auditor's tabular lien statement if not already filed in the office of the Register of Deeds, and if filed at the time of the taking effect of this act shall make and file in the office of the Register of Deeds of said County an additional or supplementary lien statement required by Section 5543, General Statutes of Minnesota for 1913 [6703], showing the entire cost of such additional improvement as a lien against the land upon and across which said improvement has heretofore been constructed and said lien statement when so filed and recorded shall be and constitute a valid and prior lien upon said land, in all respects as though originally included in the viewers' report as confirmed by the County Board of said County, and said lien shall be paid at the same time, in the same manner and be in force in all respects in the same way as other liens for benefits resulting from the construction of said ditch. The total cost of said additional improvement shall be paid by the owner of the land across which said additional improvement is constructed in conformity with the statutory requirements for the payment of such lien as set forth in the order of the County Board confirming and accepting said viewers' report and establishing said ditch. ('23 c. 248 § 1)

6705. Record of statement — Liens — Fees — Such statement shall then be signed by the auditor in the presence of two attesting witnesses, and be duly acknowledged by him, and shall then be duly filed with and recorded by the register of deeds of such county. The amount which each tract of land and each public or corporate road or railroad will be liable for, and the interest thereon, as hereinafter provided, shall be and remain a first and paramount lien on such land, public or corporate roads or railroads, until fully paid; and shall take precedence of all mortgages, charges, incumbrances or other liens whatever, such payments may be made as hereinafter provided. Such filings shall be deemed notice to all parties interested of the existence of such lien. The fees of such register of deeds for such recording shall be paid by the county, on the allowance of the board of county commissioners, and said statement, after the same has been recorded, shall be returned to the auditor, to be by him placed with the other papers relating to such ditch, and carefully preserved by him. ('05 c. 230 § 20) [5544]

135-276, 160+766.

6706. Corrected summary statement of ditch proceedings to be prepared by county auditor and filed with register—That in all cases in this state where a public drainage ditch has been regularly established by order of a county board or by order of the district court or a judge thereof pursuant to the provisions of Chapter 230 of the General Laws of Minnesota for 1905 and acts amendatory thereof or supplementary thereto, and where a county auditor or county auditors, as the case may be, has made a tabular statement and summary as required by Section 19 of Chapter 230 of the General Laws of Minnesota for 1905 [6703] and filed the same for record in the office of the register of deeds in and for the proper county, which said statement and summary is erroneous and which does not conform to the order of the county board or the order of the district court or the judge thereof, as the case may be, the county auditor or county auditors, as the case may be, shall at the earliest practicable time after the discovery of said error make and prepare in tabular form a correct list and statement of the facts required by said Section 19 of Chapter 230 of the General Laws of Minnesota for 1905 [6703], the said corrected statement to be signed and executed by the county auditor

6704 Et seq.
27 — 109

6705
25 — 10
25 — 26

or the county auditors, as the case may be, in the manner required by Section 20 of Chapter 230 of the General Laws of Minnesota for 1905 [6705], which said corrected statement and summary shall then be filed with and recorded by the register of deeds of the proper county. ('15 c. 178 § 1)

6707. Corrected statement to take place of erroneous statement—That when said corrected statement and summary has been prepared and filed for record as hereinbefore provided, then and thereupon the said corrected statement and summary shall take the place of the said erroneous statement and summary and the amounts set forth therein shall be of the same force and effect as liens against the lands described therein as if the erroneous statement and summary had been correctly made and in conformity with the order of the county board or of the district court, as the case may be. ('15 c. 178 § 2)

6708. Release of lien as to erroneous statement—That in any case where it becomes necessary to make a corrected statement and summary as hereinbefore provided, the county auditor of any county affected is hereby authorized to release and discharge of record the liens set forth in the erroneous statement and summary in the manner following, to-wit: he shall issue under his hand and official seal a certificate stating that the original statement and summary has been found to be incorrect; that a true and correct statement and summary has been filed in his office and for record in the office of the register of deeds, and that the liens set forth in the corrected statement and summary are substitutes for and in lieu of the liens set forth in the erroneous statement and summary, and shall authorize the register of deeds in and for the proper county to release and discharge the liens set forth in said erroneous statement and summary, and shall direct said register of deeds to substitute in lieu thereof as liens against the lands described therein the amounts set forth in the corrected statement and summary; and when said certificate is recorded in the office of the register of deeds the liens evidenced by the erroneous statement and summary shall thereupon be released and discharged and the corrected statement and summary and the liens evidenced thereby shall take the place and be in lieu thereof, and the register of deeds in and for the proper county shall thereupon be authorized to release and discharge the original tabular statement and summary and the liens evidenced thereby of record. ('15 c. 178 § 3)

6709. Application of payment on corrected statement—That in any case where a corrected statement and summary is made and filed as hereinbefore provided after one or more installments of the liens set forth in the erroneous statement and summary have been collected by the treasurer of the proper county, or have been placed on the tax rolls for any year but not collected, then if the amount of the lien set forth in the corrected statement and summary against any particular description is less than the amount set forth in the erroneous statement and summary, the county auditor of the proper county shall make each of the installments unpaid proportionately lesser, so that the total amount collected as a lien against any particular description shall be equal to the amount set forth in the corrected tabular statement and summary with interest hereon; and if the amount of the lien set forth in the corrected statement and summary is more than the amount set forth in the erroneous statement and summary, the county auditor of the proper county shall make each of the installments unpaid proportionately larger so that the total amount collected as a lien against any particular description shall be equal to the amount set forth in the corrected tabular statement

and summary with interest thereon. ('15 c. 178 § 4)

6710. Actions of county auditors to make corrections legalized—That in all cases where the county auditor or county auditors, as the case may be, have proceeded in the manner herein provided for correcting erroneous statements and summaries in county or judicial ditches, the same are hereby in all respects legalized and the erroneous statement and summary is hereby declared to be null and void and the corrected statement and summary is hereby given the same force and effect as if an erroneous statement and summary had never been made or filed ('15 c. 178 § 5)

6711. Cost of culverts to be added—That in all cases in this state where a public drainage ditch has been regularly established by order of the district or a judge thereof, pursuant to the provisions of chapter two hundred thirty (230) of the General Laws of Minnesota for 1905, and acts amendatory thereof or supplementary thereto, and where (first) in the course of construction of such ditch, it has been found necessary by the engineer in charge of the said ditch to install culverts in the said ditch to protect said ditch against the caving of banks or for any other reason, and (second) where in making his preliminary estimate of the cost and items of said ditch, the engineer making said estimate did not include therein the cost of the said culverts, and (third) where the added cost of the said ditch caused by the installation of said culverts increases by more than ten per centum the total original contract price for the construction of such ditch, and (fourth) where the total cost of the said drainage ditch, including the added cost of such culverts, does not exceed the total amount of the assessment for benefits as returned by the viewers and fixed by the court, and (fifth) where the engineer in the matter of said ditch makes certificate of the facts certifying to the foregoing requirements and files such certificate in the office of the county auditor of each county affected by such public drainage ditch, then and in that case the county auditor or county auditors shall in making and filing lien against the various lands assessed for the cost of the said ditch, include therein as one of the items of the said lien and of the lien stated, the cost of such installation of said culverts, the same as if said cost of such installation were included in the original estimate of the said engineer in the matter of said ditch. ('13 c. 379 § 1) [5545]

6712. Interest—Premium on bonds—The amount that each tract of land, public or corporate road or railroad shall be liable for on account of the location, construction and establishment of any ditch or ditches under the provisions of this act shall bear interest from the date of the filing of the auditor's statement in the register of deeds' office at a rate of interest not exceeding six per cent (6%) per annum until paid, such rate of interest to be fixed and determined by the county board in case of a county ditch or by the judge of the district court in case of a judicial ditch at the time of establishing such ditch. Provided, that when bonds are issued by the county for the construction and establishment of such ditch the same rate of interest shall be charged as said bonds so issued bear; provided, further, that in any case and at any time after the establishment of any ditch, the county board in case of a county ditch or the district judge in case of a judicial ditch may, upon such notice as shall be respectively ordered, and upon a showing of cause therefor, either change or modify any order previously made fixing and determining the rate of interest, or fix the rate of interest in case the same has not been previously fixed, or change the existing rate of interest.

All interest shall constitute an additional lien on said lands or roads until fully paid, which said interest

when about to be paid shall be computed by the county auditor. If bonds are sold at a premium, such premium shall be used as far as may be to make up any deficiency in the assessments levied by the county auditor or county auditors in the proceedings, and the balance remaining of such premium, if any, shall be used as far as practicable, in keeping such ditch in proper repair and free from obstruction so as to answer its original purpose. ('05 c. 230 § 21, amended '11 c. 384 § 12) [5546]

'21 c. 155 is unconstitutional (154-371, 191+931).
'11 c. 273 § 1, legalizes, confirms and validates levies of interest made in proceedings for ditch where no bonds were issued.

6713. Payment of liens—That payment of such liens shall be made to the treasurer of such county, as follows:

One-tenth of such principal on or before November 1st subsequent to the filing of lien in the office of the register of deeds and one-tenth on the first day of November of each year thereafter until the whole thereof is paid.

Provided, that if in the final order establishing said ditch or at any time thereafter the judge of the district court or the county board, in his or its discretion so orders, then payment of such lien shall be made to the said treasurer as follows:

One-fifteenth of said principal on or before five years from November 1st subsequent to date of said filing in the office of the register of deeds and one-fifteenth on the 1st day of November of each year thereafter until the whole amount of said principal is paid.

Except as provided in section 5545, General Statutes 1913 [6711], the said principal lien shall bear interest at a rate not to exceed six per cent (6%) per annum payable annually on November 1st, reckoned from the date of the filing of the lien statement in the office of the register of deeds, and interest on the whole of the principal of such lien remaining from time to time unpaid shall be paid annually on November 1st, except as hereinafter in this section otherwise provided. In case bonds shall be issued by the county then the lien shall bear the same rate of interest as such bonds.

On or before the fifteenth day of November next following such filing the county auditor shall for the purpose of enforcing payment of such lien enter on a ditch lien record of said county the whole amount of such lien remaining unpaid against each respective tract of land subject thereto, and shall at the same time or before tax lists for such year are turned over to the county treasurer, compute interest as in this law provided on such unpaid amount to the 1st day of June following, and shall enter such interest together with the installment, if any then due, on the tax lists for such year and each thereof (installment and interest) shall be collected in the same manner as real estate taxes for that year on the tract in question are collected and the county auditor shall, in same manner, each year thereafter, compute interest on amount of such lien remaining unpaid and not previously entered on tax lists of prior year or years, together with interest to the 1st day of June, and enter the same on the tax lists with such portion of the principal of such lien as shall be due, said installment and interest to be collected in the same manner as the first payment, until the whole amount of any such lien and accumulated interest shall have been so entered on the tax lists of such county and all of the provisions of law now or hereafter existing in relation to the collection of real estate taxes so far as applicable hereto are hereby adopted for the purpose of enforcing payment of such liens and installments thereof and of the interest thereon and of each of the same, but no penalty shall be added to any such installment of principal or

interest in case of default in the payment thereof, but such installments of principal and interest shall draw interest from said 1st day of June until paid at six per cent per annum.

When payment of the full amount of such liens, with accumulated interest, shall thus, or at any one time be made, the auditor, upon presentation of a receipt from the treasurer to that effect, shall issue under his hand and official seal a certificate of such payment, and the same when recorded in the office of the register of deeds, shall release and discharge said lien of record for which service the auditor shall be entitled to receive from the applicant for release the sum of 25 cents for each description of one hundred and sixty (160) acres or less included in his said certificate.

If any items of the cost of a ditch established under this or any prior drainage law by the terms of which the cost of construction is assessed against the benefited property or corporation, from its inception to its completion, has been or shall be omitted from the original tabular statement for assessment made and filed by the auditor, with the register of deeds, then a supplementary statement for assessment shall be made by said auditor in the same form and manner as the original statement, so far as practicable, showing such omitted costs, which supplementary statement for assessment shall be filed for record in the office of the register of deeds and shall be due, payable and collectible in the same manner, time and form as if a part of the last annual installment of the original assessment. ('05 c. 230 § 22, amended '09 c. 469 § 8; '15 c. 300 § 5; '21 c. 508 § 4) [5548]

135-276, 160+766.
Whether lake was meandered and could be drained under '15 c. 300 (142-37, 170+884.)

6714. Liens and payments—In all cases in which a lien has been established against any tract or tracts of land comprising more than one governmental lot or forty-acre subdivision by reason of benefits assessed thereon in any drainage ditch proceeding and no installment of such assessment or interest thereon shall be in default, any person or corporation having an interest in said land, or any part thereof, may petition the district court of the county wherein such land is situate to have such lien apportioned between or among specified portions of such tract or tracts. Upon the filing of such petition the court shall, by its order fix a time and place at which said petition shall be heard and requiring personal service of a notice of such hearing to be served upon the county auditor, the occupants of such premises and on all parties having an interest in said premises as shown by the records in the office of the register of deeds of such county at least ten days before such hearing; or if for any reason personal service can not be made upon all of said persons, notice shall be given by two weeks' publication in a legal newspaper published at the county seat of such county in lieu of personal service. At the time and place appointed by the court for a hearing upon such petition or at the time to which such hearing may have been adjourned, the court shall hear any and all evidence bearing upon the matter set out in said petition and as to what will be a proper and equitable apportionment of said lien between or among the portions of such original tract which it is desired shall be encumbered by separate liens and shall thereafter by its order apportion such lien among such tracts, but in no case shall the aggregate of said separate liens be different from the amount of the unpaid portion of the original lien. A certified copy of the order apportioning said lien shall be recorded in the office of the register of deeds of such county and filed in the office of the county auditor which shall operate as a

6713
70-M 141

6713
12-NW 170
3-G.S. 2211

division and apportionment of such original lien between such various tracts of land originally covered thereby and shall operate as a release of each of said tracts from said lien, except the amount so apportioned against it and thereafter the amount apportioned to each of such respective tracts shall be entered separately against such tract upon the tax list and so reported to the treasurer for collection and not reduction or abatement of the amount so apportioned shall be thereafter made. ('19 c. 471 § 7)

6715. State and railroad lands assessable—All lands owned by this state, and all lands owned by any railroad or other corporation, benefited by any such ditch, drain or water course, shall be liable for such benefits the same as taxable lands. ('05 c. 230 § 23) [5549]

6716. Township, village, city or county, subject to assessment for benefits and procedure for payment—Any township, village, city, county or other municipality receiving any benefits from the construction of drainage improvement under the provisions of this act shall be assessable therefor for any improvements to any public roads, street or other property owned or controlled by such municipality, and in the case of villages or cities they shall also be assessable for any benefits derived from the construction of such drainage improvement by way of furnishing an outlet for drainage of surface waters from within or in the vicinity of such city or village and for the removal of unhealthful conditions in the vicinity of such village or city by the drainage of stagnant waters from within or in the vicinity of such city or village, or for the furnishing of any other drainage or sewer outlet that may result in any benefit to or improvement of the healthful conditions of said city or village, and it shall be the duty of the viewers appointed under the provisions of this law to assess such benefits to such municipalities. Whenever any public road or street shall have been found to be so benefited the city, village, town or county which is by law chargeable with the duty of keeping such road or street in repair shall be assessed the amount of such benefits accruing to such road or street within the limits of such town, village, city or county, and all benefits that shall result to any such village or city in consequence of being furnished an outlet for drainage of any kind or improvement of the healthful conditions of said city or village as hereinbefore specified, shall be also assessed against such village or city, by reason of the construction of such improvement and the same, being fixed and determined by order of the board or court at any final hearing, or in case of appeal at any subsequent hearing before the court, the amount of the liability of such municipality for such assessed benefits shall be determined in the manner provided in section 5543 of the General Statutes of Minnesota of 1913 [6703] and the amount thus ascertained shall thereupon become a liability of such city, village, town or county, and shall be due and payable in ten annual installments beginning on the first day of June next following the date of the entry of the lien against private individuals as herein provided, and if such installments are not paid within thirty days after its maturity the amount thereof shall be extended by the county auditor against all the property in such city, village or town liable to taxation, and a levy thereof made thereon and the same shall become due, to be paid and collected in the same manner and at the same time as other taxes. In the event that for any reason an additional lien statement shall be filed in any drainage improvement the same method shall be pursued to ascertain the actual liability of each municipality or other party, and additional lien statement made and filed with reference to municipal-

ities the same as in the case of lands or individuals. Provided: when any public road found to be benefited is a county or state road, as defined by the laws of this state, the benefits accruing thereto shall not be assessed against any city, village or town chargeable with the duty of keeping such roads in repair, but the same shall be assessed against the county and the amount thereof shall be charged to and paid out of the general road and bridge fund of said county. Whenever the lands of any railroad company shall be determined in any such proceeding to be benefited by any such improvement said lands shall be assessed their just proportion of the benefits as other lands are assessed, and such assessments shall be collected from the owners of such lands and in the same manner as in the case of other lands.

Whenever any railroad or the lands of any railroad company shall be determined in such proceedings to be benefited by any such ditch, such railroad, or the lands of such railroad company shall be assessed their just proportion of such benefits as other lands benefited are assessed, which assessment shall be collected from the owner of such railroad or from such railroad company in the same manner as personal taxes are collected by law. From the date of the filing by the county auditor or in the office of the register of deeds of the statement aforesaid, the amount of such assessment, with interest, shall constitute a lien against all property of such owners and railroad company within such county. Such lien may be foreclosed by action in the same manner as provided by law for the foreclosure of mortgage liens. ('05 c. 230 § 25, amended '09 c. 469 § 9; '17 c. 441 § 13) . [5551]

6717. County boards to keep ditches in repair—The county board of the several counties in this state within which is constructed or may hereafter be constructed, any state, county or judicial ditch lying wholly or partly within such county, shall keep the same or such part thereof as lies within such county in proper repair and free from obstruction in the manner specified in this act so as to answer its purpose, and in case there is sufficient funds to the credit of the drainage ditch or system to make such repair, and the improvement consists of cleaning out and repair only, such funds may be expended by the county board for such purpose without further assessment as specified in this act; but no part of the original ditch fund shall be used for repair or cleaning out a ditch until the same has been completed according to plans and specifications. In case there is not sufficient funds to the credit of such drainage ditch so to be repaired, the county board may pay for the same out of the general revenue fund of the county, and to raise the necessary money to reimburse that fund it is hereby authorized to apportion and assess the costs of such repairs upon all lands originally assessed for benefits in proceedings for the construction of such ditch said apportionment and assessment to be in the same proportion as was originally assessed for benefits. If the improvement needed consists of the cleaning out and repair of a state ditch that has been constructed otherwise than by assessment against property benefited, or if it consists in the deepening, widening or extending of a county, state or judicial ditch then the county board or district court, as the case may be, is hereby authorized to cause the benefits and damages that will result from such improvements to be ascertained and determined and to assess the cost of the same against the property benefited by the construction of the original ditch and all property benefited by the construction of any subsequent ditch or lateral, public or private, emptying into said original ditch or any lake or pond

6717
199-NW 883
6717
159-M 42
205-NW 37
6717 Et seq.
27 — 22

to which said original ditch forms an outlet or which contributes to the necessity of deepening, widening or extending said original ditch to obtain a better outlet, in proportion to the benefits received, in the manner provided in this act. ('05 c. 230 § 26, amended '07 c. 367 § 4; '09 c. 469 § 10; '11 c. 384 § 8; '13 c. 179 § 1; '15 c. 300 § 6; '21 c. 508 § 5) [5552]

1905, c. 230 § 26, so far as it attempted to confer authority to enlarge a previously constructed ditch and assess adjacent property, held unconstitutional (109-88, 122+1120).

Cited (114-281, 130+1103; 117-50, 134+226).
'141-445, 170+594; 145-35, 176+183; 147-422, 180+537; 151-311, 186+715; 151-285, 186+713; 151-274, 186+709; 153-268, 190+255.

6717-1. **Petition for repair or cleaning**—Upon the filing of a petition by any party, parties or corporation, municipal or otherwise, interested in or affected by a drainage ditch with the county auditor of any county in the case of a county, state or judicial ditch lying wholly within such county, or with the clerk of the district court of any county affected, in the case of a state ditch affecting two or more counties, or with the clerk of the district court where the original petition was filed in the case of a judicial ditch affecting two or more counties, therein setting forth that such drainage ditch, describing the same by number or other description sufficient to identify the same, is out of repair or that portions thereof are obstructed and describing in general terms the nature, extent and location of such obstruction, or that such ditch, by reason of the addition of laterals, either public or private, or for any other reason is of insufficient capacity, or needs deepening, widening or extending so as to furnish sufficient capacity or better outlet, it shall be the duty of the county auditor in the case of a ditch lying wholly within such county to present the same to the county board at their next meeting, and of such clerk of the district court in case of a ditch affecting two or more counties to present the same to the judge of said court, within ten days from the filing thereof, and thereupon it shall be the duty of the county board or the judge of the district court, as the case may be, to appoint a competent engineer to examine such drainage ditch and make report thereon to said board or court, as the case may be. Such engineer shall give bond in the manner now provided by law for the construction of county ditches and shall within thirty days from the date of such appointment commence such examination and surveys if necessary, and make report to the board or court, as the case may be, at as early a date as practicable, with his recommendation thereon, and he shall submit with such report a map of such drainage ditch or such portion thereof as is obstructed or otherwise needs improving or extending and include therein sufficient detail to show the nature and extent of such obstruction and necessary improvements and in case he shall recommend that such ditch needs deepening, widening or extending a map of the original ditch and all laterals or extensions, public or private, open or tiled added thereto and all lands affected by such original ditch and such additions and a description of all the land affected by such deepening, widening or extending of said ditch shall be submitted therewith, including details, plans and specifications and estimate of the cost sufficiently complete to enable the board or court to fully understand the nature of the improvement and the extent and probable cost thereof, and supply the necessary details to let a contract therefor, and so far as applicable and necessary said engineer shall in the performance of his duties comply with the requirements of Section 5526, General Statutes of 1913 and amendments thereto [6678], and in case of a state ditch that has been constructed other than by assessment against

the property benefited, the engineer's report shall cover the same around, and in addition thereto shall give the description of all lands affected thereby and so far as practicable the names of the owners thereof.

Upon the filing of the report of the engineer with the county auditor, or with the clerk of the district court, as the case may be, it shall be the duty of such court or board to make the necessary inquiry to determine to their satisfaction the accuracy of the facts set forth and recommended in such report and petition and for such purposes are authorized to order a hearing thereon, giving such reasonable notice as may be deemed necessary, and if it shall appear from such report or the evidence presented in the case of a county or judicial ditch lying wholly within such county, and the board shall find that all the improvement that is necessary is that said ditch needs cleaning out or repairing said board shall make its findings and order accordingly and direct the county auditor of such county to proceed to let a contract therefor in the same manner as provided in Section 5536, General Statutes of 1913 [6689], as in the case of county ditches and upon the letting of said contract, if there is not sufficient funds to the credit of such ditch to make such repair, it shall be the duty of the board to order the county auditor to make and file in the office of the register of deeds a summary statement and lien as provided in Sections 5543 and 5544, General Statutes of 1913 [6703-6704], in the case of county ditches, and it shall be the duty of the auditor to make and file such statement and assess against the property benefited in said original ditch proceeding in the same proportion as in the construction of said original case of the ditch, except that in all cases where the total cost of such cleaning out and repair, including expenses, shall not exceed the sum of two thousand (\$2,000) dollars the same may be made payable, when ordered by the board, in one to five equal annual installments, and it shall be the duty of the auditor to include in such statement and provide for the collection for the benefit of the county when funds have been advanced as herein provided interest upon the total sum so advanced at six per cent per annum.

In the case of a judicial ditch extending into two or more counties, if it shall appear from said report or otherwise and the court shall find that the improvement needed consists only of the cleaning out and repair of such ditch or certain portions thereof, then the court shall make its finding accordingly and by order direct the county auditors of the several counties affected to let a contract therefor according to the plans and specifications of the engineer, and thereupon and within twenty days thereafter, the county auditors of such counties shall proceed to let a contract for the cleaning out and repair of such ditch in the manner provided by Sections 5536 and 5537, General Statutes of 1913 [6689, 6690], in the case of judicial ditches, and within twenty days after the letting of such contract, the county auditors of such counties shall make a detailed statement showing the cost of such improvement as shown by the contract, together with all other costs and expenses connected therewith, and file such statement with the clerk of the district court where the petition was filed, and thereupon it shall be the duty of the clerk of said court to present the same to the judge at the earliest date, who shall by order, apportion the cost of such improvement among the several counties in the same manner and in the proportion as the cost of the original ditch, and the county auditors of the said several counties shall thereupon make and file in the office of the register of deeds a summary statement and lien as provided in Sections 5543 and 5544, General Statutes of 1913 [6703, 6704],

in the case of judicial ditches, and assess the cost of such improvement against the property in his county benefited by said original ditch in the same proportion as the original cost of such ditch and the county board of said counties shall provide the funds to pay such cleaning out and expenses in the same manner as herein provided in the case of cleaning out county ditches.

That in any county of this state having an area of more than five thousand square miles, and wherein drainage ditches costing in the aggregate over six hundred thousand dollars (\$600,000) have already been constructed, or shall be hereafter constructed, the county board of such county may purchase such equipment for use in the construction, repair and clean-out work, and such motor or other vehicle for use of the county ditch inspector and any county drainage engineers employed by said county on said work, as said county board may deem necessary. Such equipment and transportation facilities shall be purchased in the same manner as is now provided by law for the purchase of road machinery by any such county, and the cost and maintenance thereof shall be paid out of the general revenue fund of said county. In any such county the cost of such equipment and vehicles, and the maintenance thereof, shall be reimbursed to said revenue fund, as provided under Section 5552, General Statutes of Minnesota for 1913 [6717], by assessment upon the lands originally assessed for benefits by reason of the construction of ditches on which such equipment and transportation facilities shall be used. If sufficient funds remain in any ditch fund of said county, in excess of the requirements for completing said ditch, such expenses of purchase and maintenance of such equipment and vehicles, may be paid out of any such ditch funds in proportion to the benefits resulting to the lands included in said ditch system from the use thereon of said equipment and vehicles, as may be determined by the county board of such county. That in any such county the salary of the county ditch inspector may be fixed and paid on an annual basis, payable monthly, as the salary of other county officials is paid, to be apportioned to the property in the ditch systems in such county on which such services are performed, in the manner now provided by law. ('21 c. 508 § 6)

6717-2. Viewers—Report—If it shall appear from the report of the engineer or the evidence presented in support of same as provided in section 6717-1 of this act that said ditch is a state ditch that has been constructed other than by assessment upon the property benefited, or that the improvement needed consists in deepening, widening or extending the original ditch, and the board or court, as the case may be, shall so find, then it shall be the duty of such board or court to appoint three disinterested viewers, whose duties and responsibilities in the premises shall be the same as viewers appointed under section 5528, General Statutes of 1913 and amendments thereto, and in the performance of their duties said viewers shall in the case of a state ditch constructed other than by assessments on the property benefited make complete report of all property benefited by the original construction of said ditch, together with any lateral or extension thereto, whether public or private, and the amount of such benefit, but if the improvement consists of deepening, widening or extending said ditch, whether state, county or judicial, said viewers shall examine and report all benefits to all property benefited by said original ditch and all extensions or lateral thereto resulting from the construction of said original ditch, laterals and extensions and such deepening, widening or extension, and shall report the damages resulting from such deepening, widening, cleaning out or extending in the same manner as provided in judicial ditch proceedings.

Upon the filing of such report with the county auditor or the clerk of the district court, as the case may be, it shall be the duty of such auditor or such clerk to give notice of a hearing upon the report of the engineer and viewers in the same manner as provided in section 5531, General Statutes of 1913 and amendments thereto [6684], in the case of county or judicial ditches, and at such hearing the board or court, as the case may be, shall have and may exercise the same authority as provided in section 5532, General Statutes of 1913 [6685], at hearings for construction of county or judicial ditches and all parties affected by such improvement may appear and be heard and shall have the same right of appeal as provided in section 5534, General Statutes of 1913 [6687] and amendments thereto.

If upon said hearing the board or court shall determine to order the construction of the improvement petitioned for or some part thereof and shall by order confirm the report of the engineer and viewers as originally presented or subsequently modified or some part thereof, then it shall be the duty of the county auditor in the case of proceedings before the board or the county auditors of the counties affected in proceedings before the court to proceed and let a contract for the construction of such improvement as ordered by the board or court in accordance with the plans and specifications pursuant to the provisions of section 5536, General Statutes of 1913 and amendments thereto [6689], and thereupon or within ten days thereafter in proceedings before the county board, it shall be the duty of the county auditor to make and file a lien statement, including therein all the costs of said improvement and expense connected therewith in accordance with the provisions of section 5543 [6703], and levy and assess the cost of such improvement against the property assessed in the original construction of said ditch, together with all laterals, additions or extensions thereto and all property affected by the deepening, widening or extending of said original ditch as included in the engineer and viewers' report as finally approved by the board, and cause said lien to be filed and recorded in the office of the register of deeds in accordance with the provisions of section 5544, General Statutes of 1913 [6705], and when so filed the same shall be and become a first lien on all property included in such statement, and the provisions of section 5548 [6713] shall apply to and govern the assessments and collection of such lien, except that in all cases where the total cost of such improvement does not exceed the sum of three thousand (\$3,000) dollars said lien may, when ordered by the county board, be collected in installments of one to five years, and it shall be the duty of the county board to provide the funds for the payment of the cost of such improvement and expense, and they are hereby authorized so to do in accordance with the provisions of section 5542, General Statutes of 1913 [6696], and may pay such costs and expense out of the general ditch fund when funds are available therein, or out of the general revenue fund of the county, but in either case, it shall be the duty of the county auditor to provide for and collect as a part of the expense of such improvement interest upon all sums advanced by the county at the rate of six per cent per annum, and it shall be the duty of the county auditor and county treasurer to extend such assessment upon the records of their counties in accordance with the provisions of section 5548 and amendments thereto [6713], and collect the same as in the case of other assessments against such property.

In the case of proceedings in the district court upon the letting of a contract by the county auditors, it shall be their duty within ten days from the letting of said

contract to make and file in the office of the clerk of the district court a detailed statement showing the cost of such improvement, including the amount of the contract and all other costs and expense connected with such proceedings, and file the same with the clerk of the district court where the petition was filed and thereupon it shall be the duty of the clerk to present the same with the least possible delay to the judge of said court, who shall make an order apportioning the total cost of such improvement among the several counties affected in proportion to the property benefited in each county as shown by the viewers' report, and upon the filing of such order with the clerk it shall be his duty to make and file with the auditors of each county affected a certified copy of such order, together with a copy or so much of the viewers' report as will show all property assessed for benefits within such county, and thereupon it shall be the duty of said county auditors, respectively, to make and file the statement of lien with the register of deeds and cause to be levied and assessed against said property and collected in the same manner and with like effect as provided herein in the case of county ditches, and the county board of such counties shall provide the funds to pay the cost and expenses of such improvement as provided herein in case of county ditches. ('21 c. 508 § 7)

6717-3. Additional liens may be filed—In any case where a drainage ditch or system has been established under the provisions of section 230, Laws of 1905, and amendments thereto, or any other law of this state requiring the filing of tabular statements and liens as provided in said law, and tabular statements and liens have been made, filed and recorded as provided in sections 5543 and 5544 of the General Statutes of 1913 [6703, 6705], and subsequent to the filing of such statement and lien increased costs in the construction of said ditch have been incurred by reason of the modification of the plans and specifications by the engineer or by reason of the encountering of unfortunate conditions in the construction of said ditch or drainage system, or where a part of the cost of such ditch or drainage system has been erroneously assessed against property not subject to assessment or which is exempt by law from such assessment, then and in that event the amount of such increased cost arising from any of the foregoing causes but not to exceed, however, the margin between the former lien statement and the total benefits reported and approved, may be included in an additional tabular statement and lien, and the county auditor in the case of a county ditch when ordered by the county board, and the county auditors of the counties affected in the case of a judicial ditch or other drainage system when ordered by the court shall file an additional tabular statement and lien against the property benefited in said ditch or drainage system in the same manner and form as the original lien, and assess the same against the property benefited in the same proportion as the original liens, provided that in the event that the increased assessment included in such additional lien shall not exceed one-tenth of the original cost as shown in the original lien filed, the same may be extended when so ordered by the board or court as an additional installment payable one year following the last payment of the original lien. ('21 c. 508 § 8)

6717-A. Ditch inspector—Salary—That in all counties where drainage ditches costing in the aggregate not less than \$50,000, have been or hereafter shall be constructed under the provisions of the laws of the state of Minnesota, by the district court or county board, there shall be appointed by the county board, a competent man, who shall be known as county ditch

inspector, whose duty it shall be to travel over the line of all such county and judicial ditches in said county at least twice in each season and inspect the same, observe their operations and what repairs thereto or improvements may be necessary or proper, and immediately after such inspection he shall make a full report in writing to the county board of his work, together with the estimate of the cost thereof. He shall also include in such report an itemized statement of the time spent upon each ditch and of his expenses incurred in connection therewith.

At the first meeting of the board following the filing of said report with the county auditor, said county board shall proceed as provided in section 5552 of the General Statutes of 1913 [6717].

The salary of such county ditch inspector shall be fixed by the county board and shall be paid out of the general revenue funds of the county. In counties containing less than 400,000 inhabitants according to the last federal census the salary of such county ditch inspector shall be reimbursed as provided for in section 5552, General Statutes 1913 [6717], by assessment upon all lands originally assessed for benefits by reason of the construction of the ditches inspected by him. ('17 c. 441 § 14, amended '19 c. 471 § 8; '21 c. 508 § 9)

6717-B. Tile drainage system—Whenever two or more parties owning land adjoining or in the vicinity of any public ditch, drain or natural outlet, or in the vicinity of any body of water forming a part of or connected with any such ditch, drain or outlet, shall petition the county board of the county wherein said land is located for the establishment of a tile drainage system draining the land described in such petition and connecting the same with said ditch, drain, outlet or body of water and shall in said petition describe the land, if any, that it may be necessary to cross to connect the land of petitioner with said ditch, drain, outlet or body of water, giving a description in general terms of the tile drainage system petitioned for and shall therein set forth that said proposed system will benefit the public health, and general welfare of that vicinity and that the benefits that will be derived therefrom will exceed the cost of construction of said system, including damages, and shall in said petition fully authorize and empower the county board of said county named in said petition to perform all things necessary to establish and construct such tile drainage system and to exercise in so doing all the authority by this act or any other law of this state granted to the board of county commissioners in the establishment of county ditches or county drainage improvements and authorize such county board to order established and constructed said tile drainage system as finally determined upon by them and to levy and assess the cost thereof, including the expenses in connection therewith against the property drained and benefited in proportion to the benefits received and shall file said petition in the office of the county auditor of such county, together with a bond in a sum of not less than one thousand (\$1,000) dollars with sufficient sureties to be approved by the county auditor conditioned to hold the county harmless from any cost in connection with said proceeding; that thereupon the said county board shall have jurisdiction of all persons and property named, described and referred to in said petition.

At the first meeting of the said county board after the filing of said petition the said county board shall by order appoint an engineer and direct him to make complete survey of the tile drainage system petitioned for and make his report thereon to the court at the earliest possible date, and the provisions of sections 5526 and 5527, General Statutes of 1913 [6678, 6680], shall so far as applicable apply to the duties and work

of such engineer except in all cases under this act, the engineer shall not be required in his report to designate the size of the ditch or the cubic yards to be removed, but shall give the total area to be drained on each tract of land; the size of the main tile and laterals; the depth of the tile and the length of the main tile and of each lateral, and shall attach to his report a profile showing the surface of the ground and the depth of all tile to be laid in connection with said system, and a complete plat of said system located with reference to government corners or known and established land marks, and shall as a part of his report include an estimate of the cost of the main tile and of the several branches, including the cost of construction and all expenses connected therewith and upon the coming in of the engineer's report and the filing thereof with the county auditor the board of county commissioners shall appoint three viewers to examine the land described in the petition and the engineer's report, and shall within ten days after appointment proceed to make an examination of said land and make a detailed report to the county board within thirty (30) days from the date thereof.

The provisions of sections 5526 to 5548, inclusive, of the General Statutes of Minnesota for the year 1913 [6678-6713], and as they may have been amended shall, so far as they may be applicable, govern and control all proceedings thereafter to be had under the provisions of this act and shall govern and control the action of all officers, parties and person therein named and all such officials in the performance of their respective duties under the provisions of this act, and all parties and persons interested in proceedings hereunder shall have and exercise all rights, powers, privileges and authority conferred by said sections and shall do and perform all acts and things required therein; provided, that in event the land described in the petition from the engineer's report or some part thereof, has not been assessed for the construction of the main ditch or drain into which said tile drainage system shall empty, then said system shall be connected with said ditch or drain only upon condition that all lands not assessed shall be assessed as provided by law in the case of construction of laterals to main ditches and said lateral or tile system when connected shall be and form a part of the general system to which it is attached for all future purposes. ('17 c. 441 § 15, amended '19 c. 471 § 9)

Purpose is to serve those with land contiguous or near public drain (151-212, 187+410).

6717-C. Plat of tiled drains—That in all cases where tile drain is required to be or is being laid as a part of the plan or system of any public ditch or drain or drainage project under any drainage law of this state, or in case of any drain being constructed by a private party, it shall be the duty of the engineer in charge of such drainage project to make at the request of the owner of any land connected with such system and as a part of his duties as such engineer, a complete plat of all tile drain used as a part of such system or any tract or piece of land connected therewith or affected by said drainage tile system, showing thereon the complete location and outlet of such tile and size and kind thereof, course and distance of each line, and the description of the land upon which the same is located and so connect the same with the main ditch and outlet and the adjoining bench marks and government corners that the said tile system or any part thereof may readily be relocated at any subsequent period from such plat.

The expense of furnishing such plat shall be paid for by the party requesting the same, who may file said plat in the office of the register of deeds of the

county or counties in which said tile drain is located. The engineer and register of deeds shall be entitled to and receive the same compensation as for other like services in ditch proceedings, and the said register of deeds shall preserve said plat and make notation thereof in his index and reception book so that the same may be preserved for future reference. ('19 c. 471 § 10)

'21 c. 6, legalizes proceedings under '05 c. 230 where the construction of the drainage is wholly within one county or partly within two or more counties, and certain requirements have been met, and the bonds, etc., are validated; but same does not apply to right of appeal, or appeals pending wherein the validity of the proceedings or sale of such bonds are in question.

'21 c. 40, legalizes proceedings pursuant to '05 c. 230, where all steps have been taken, and the time for appeal has elapsed, all bonds and liens thereunder are legalized and validated, but the right of appeal is not thereby affected nor any actions or appeals pending testing the validity of said proceedings.

6718. Judicial ditch—Petition—Bond—Before any district judge shall establish any ditch, drain, watercourse or other construction named in section one of this chapter as amended, there shall be presented to a judge of the district court in the judicial district in which any part of the proposed ditch is to be located a petition such as is required by section three of chapter 230 of the General Laws of Minnesota for the year 1905 [6676] as amended.

Before such presentation such petition shall be filed with the clerk of the district court of the county wherein the said ditch or any part thereof is to be located or constructed, and a copy thereof, duly certified by the said clerk, shall be filed with the county auditor of each of the counties wherein any of the lands mentioned or described in the said petition are located.

At the time of filing such petition, one or more of such petitioners shall give bond with good and sufficient freehold surety, payable to the county or counties, as the case may be, to be approved, including amount and sureties, by the clerk of the district court of the county where such proceedings are instituted, said bond to be conditioned to pay all expenses and costs in case the court or the judge thereof shall fail to establish said proposed ditch, drain or watercourse.

Such proceedings may be designated and numbered by the said clerk of said district court as follows:

"Judicial Ditch No." and may be so referred to at all subsequent times. ('05 c. 230 § 27, amended '09 c. 469 § 11; '11 c. 384 § 9) [5553]

104-242, 116+484.

Court has jurisdiction although ditch is wholly within single county. (131-50, 154+620; 138-207. 164+816; 140-30. 167+115; 141-448, 170+595).

6719. Appointment of viewers—At the time of the appointment of such engineer or at such time thereafter as shall be deemed advisable by the said judge of the district court, the said judge shall make an order appointing three (3) viewers, such viewers to have like qualifications and perform like duties in the matter of such judicial ditch as is provided in this chapter for qualifications and duties of viewers in the matter of county ditch proceedings before the county board, and thereafter the proceedings in the matter of such judicial ditch by such viewers shall be as specified in sections six (6), seven (7), eight (8), thirty-eight (38), forty-six (46) of chapter 230 of the General Laws of Minnesota for 1905 [6681-6683] and acts amendatory thereof and as specified in other applicable provisions of such chapter, save that the duties therein specified in respect to the county board shall be performed by such judge, and those in respect to the county auditor shall be performed by such clerk, and except that the viewers may be residents of any of the counties mentioned or described in the petition, and that the jurisdiction of such viewers shall extend throughout all such counties, and that their several

6718-19
167-M 458
209-NW 638
23-G.S. 6734

6719
205-NW 27

reports shall be filed with such clerk of the district court. ('05 c. 230 § 30, amended '11 c. 384 § 10) [5556]

138-207, 164+815; 140-30, 167+115; 143-439, 174+314.

6720—Filing of report—Notice of hearing—Immediately upon the filing of such report, it shall be the duty of such clerk to prepare and transmit forthwith a certified copy thereof to the auditor of each of the counties described in the petition, and within three days after the filing of such report, to transmit to the judge of said court a written notice of the filing of such report. Upon the receipt of such notice, the judge shall make an order fixing the time and place of hearing said petition and engineers' and viewers' report. The same notice thereof shall be given by the clerk as is provided in section nine [6684] of this chapter in respect of the county auditor, save that it shall be published and posted in each county described in the petition. ('05 c. 230 § 31) [5557]

134-437, 159+965; 140-30, 167+115; 143-439, 174+314.

6721. Hearing—Proceedings—At the time and place fixed for the hearing, if the court shall be satisfied that notice thereof has been given according to law, he shall proceed as in section ten [6685] of this chapter. All the provisions of this chapter, except the provisions of sections twelve [6687] and thirteen [6688], shall apply to judicial ditches, so far as consistent with the special provisions relating thereto. In a judicial ditch proceeding the judge of the district court shall perform all the duties required of and have all the powers vested in the board of county commissioners in a county ditch proceeding. In a judicial ditch proceeding the clerk of the district court of the county in which the proceeding is commenced shall until the making of the order establishing or refusing to establish the ditch perform all the duties required of and have all the powers vested in the county auditor in a county ditch proceeding. ('05 c. 230 § 32) [5558]

136-275, 159+759; 140-30, 167+115.

'19 c. 48, provides for issuing warrants where 75% of entire contract is completed in a judicial ditch proceeding.

6722. Order apportioning expenses—Further orders—In a judicial ditch proceeding the judge of the district court shall by his orders made either at the times of the respective hearings herein provided for, or at any other time upon five days' notice in writing of the time and place of such hearing to the auditor of each county affected, apportion and determine the items of expense, or portions thereof to be paid by the respective counties. Upon similar notice to said county auditors said judge of the district court may at any time modify said order or orders, as justice may require, or make any additional order in the premises. The word "expenses" as used in this section shall be construed to mean every item of cost of said ditch from its inception to its completion and all fees and expenses paid or incurred in pursuance thereof, including all damages awarded. Nothing in this section contained shall be construed as limiting the authority of the respective counties to issue their bonds as provided in section 18 [6696] of this chapter and the respective auditor's statements shall be filed in the respective counties and the assessments collected and bonds paid by the respective counties as hereinbefore provided. ('05 c. 230 § 33) [5559]

6723. Engineer—Vacancy—If the engineer appointed by the court or by the board of county commissioners fails to qualify, or at any time resigns, dies or becomes disabled during the progress of the work the court or board of county commissioners, as the case may be, that originally appointed him, shall forthwith appoint another civil engineer, having the qualifica-

tions required by this chapter in the place and stead of the engineer first appointed, who shall give the bond and take the oath required by this chapter and shall do all things remaining to be done by the original appointee under the requirements of this chapter. ('05 c. 230 § 34) [5560]

6724. Assistant engineers—The engineer shall have power, if the board or court, as the case may be, that appointed him, consent thereto, to appoint assistant engineers, when necessary, for whose acts he shall be responsible, and whom he may remove at pleasure. Any such assistant engineer shall, before entering on his duties, take the oath required by this chapter of the engineer, and such oath and appointment shall be filed in the office where the original petition was filed. The rate of compensation of assistant engineer shall in no case exceed the rate of compensation of the engineer and shall be fixed at the time of appointment by the board of county commissioners or the judge as the case may be. ('05 c. 230 § 35) [5561]

6725. Abandoned or dismissed proceedings—Use of former survey—Refundment under bond—In any proceedings heretofore or hereafter had for the establishment of a ditch or drain or the changing of a water course, where an engineer has been appointed and has made a complete survey, and report thereof and, for any reason, the improvement has been abandoned and the proceedings dismissed, and afterwards proceedings are instituted for the establishment of a ditch, or drain, or the changing of a water course, for the benefit or reclamation of the same territory surveyed in said former proceedings, or a part thereof, or the same territory, or a part thereof, and territory additional thereto, the engineer shall use the engineer's report, survey, stakes and monuments made in said former proceedings, as far as practicable, or as much thereof as may be applicable and the cost thereof in said former proceedings, or of such part thereof as is used, shall be paid for as part of the subsequent proceedings in which such report, survey, stakes and monuments, or part thereof, is used. Provided that when a bond has been heretofore given under and pursuant to the provisions of any drainage law of this state and the party or parties giving said bond have, because of the refusal of the county commissioners to order the construction of the ditch petitioned for, been called upon to pay to the county the expenses incurred in said proceeding, and said party or parties have actually paid to said county such expenses, and after such refusal by said county commissioners proceedings are instituted anew for the establishment of a ditch or drain or the changing of a water course for the benefit or reclamation of the same territory surveyed in said former proceeding, or a part thereof, or territory additional thereto, and the engineer uses the engineer's report, survey, stakes and monuments made in said former proceedings then and in that event the cost of said work of said engineer and his assistants in said former proceedings shall be assessed against the lands benefited and payment of the cost incurred by reason of the work of said engineer and his assistants in said former proceeding shall be made by said county upon collecting the same, to said party or parties who have made payment as aforesaid under said bond. ('05 c. 230 § 36) [5562]

148-351, 182+169.

6726. Bridges and culverts—Notice to certain corporations—The county auditor shall notify each municipal, railroad and other corporation to construct any bridge or culvert across or upon its road or right of way within a reasonable time named in such notice. If any such work is not done within the time limited, the board of county commissioners may cause the same

6720-22
199-NW 883
6725
25 — 348
6720-22
159-M 428

6725
27
— 22

6726
161-M
200-NW

to be done, and the cost thereof shall be deducted from the damages allowed such corporation, or collected from it as in case of an assessment for benefits. ('05 c. 230 § 37) [5563]
142-303, 172+127.

6727. Assessment not to exceed benefits—The amount that any tract of land, public or corporate road or railroad shall be liable for and on account of the location, construction and establishment of any ditch or ditches under the provisions of this chapter, or on account of the repair thereof, shall in no event exceed the benefits which will accrue thereto as determined in the proceedings for such location, construction and establishment or repair. ('05 c. 230 § 38) [5564]
147-293, 180+120; 147-429, 180+539.

6728. Damages arising after construction—Petition—Viewers—Notice—Hearing—That whenever any land adjacent to any ditch or drain constructed, either under the provisions of this chapter or under any prior drainage law by which the original cost of said ditch or drain was assessed against the benefited property, may be or has been damaged subsequent to the construction of such ditch or drain by reason of a part of the soil being carried away by water flowing through said ditch or drain, or by the deposit of earth or any other foreign substance (snow and ice excepted) on said land, and which damage was not considered and included in the award of the viewers appointed in the proceedings to construct such ditch or drain, the owner of the land so damaged may, at any time within six years after the completion of the ditch or drain causing such damage petition the board of county commissioners of the county where the land claimed to be damaged is situated for the appointment of viewers to ascertain and report the amount of such damages, such petition shall state the description of the land alleged to have been damaged, the amount of damage claimed, the location of the ditch or drain, the description of the land found in the proceedings to construct said ditch or drain to have been benefited by its construction, and the names of the owners of the land benefited, as shown by the last assessment roll. Upon the filing of the petition and a bond in the sum of one hundred dollars, conditioned that if it finally be determined that no damages have been sustained that are properly allowable under this section, the petitioner will pay all the expense of the proceedings had under the petition, it shall be the duty of the board of county commissioners at their next regular or special meeting to appoint three persons who are qualified under the provisions of this chapter, viewers, selecting if practicable the same persons as acted as viewers in the proceedings to construct the drain or ditch causing the damage, and the board of county commissioners shall fix the time and place for the first meeting of the viewers, which shall be not more than twenty days from the date of their appointment. In case any of the viewers so appointed shall fail for any cause to qualify, the county auditor shall designate some proper person to take his place. Each of said viewers before entering upon the duties of his office shall take and subscribe an oath that he will faithfully perform his duty as viewer and file the same in the office of the county auditor. Upon the appointment of the viewers the county auditor shall give notice to parties interested, and whose lands are liable to be assessed for the payment of the damages claimed, by one publication at least one week before the first meeting of the viewers in the newspaper in which the last delinquent real estate tax list was published, if that paper is still published in the county, and if not, in some legal newspaper printed and published in the county, and if there is none, in some newspaper published at the state

capital, stating the date and the first meeting of the viewers, and that any party interested may appear at that meeting and at such other time and place as the viewers may fix, and be heard in relation to the damages and such other matters as the viewers are authorized to hear and determine, and proof of the publication of said notice shall be filed in the office of the county auditor prior to the first meeting of the viewers. ('05 c. 230 § 39) [5565]

Cited (115-440, 132+749).
140-145, 167+362.

6729. Duties of viewers—Award—Report—Compensation—The viewers shall meet at the time and place named by the board of county commissioners for their first meeting and hear such evidence as shall be offered by the petitioner or any interested party, and for that purpose they may adjourn their hearing from time to time and to such places in the county as they may deem proper; and they shall make a personal examination of the premises claimed to be damaged and inquire into the cause and amount of damage, and if they find that any damage contemplated by the last above section of this chapter has been done the land described in the petition, they shall make an award in writing, stating the cause and amount of damage and file said award in the office of the county auditor, and the county auditor shall, after the time to appeal has expired as hereinafter provided, if no appeal is taken, issue an order on the county treasurer for the amount of such award in favor of the party entitled thereto, and the amount so paid, together with the fees and expenses of the viewers, shall be assessed against the land that was found in the proceeding to construct the ditch in question to have been benefited in the proportion and manner provided by this chapter for the assessment of benefits. If the viewers find that no damages have been sustained that are properly allowable under the provisions of this chapter, they shall so report, and the expenses of the proceedings shall be paid by the petitioner, and on his failure to pay the county may maintain an action on the bond hereinbefore provided for. Each of the viewers shall receive three dollars per day for each day actually and necessarily spent in the performance of his duty as viewer, not exceeding 5 days, together with his actual necessary expenses, an itemized account thereof to be filed with and audited and allowed by the county auditor, and paid by the county treasurer on the order of the county auditor. ('05 c. 230 § 40) [5566]

Cited (115-440, 132+749).

6730. Appeals—Bond—Either the board of county commissioners, the petitioners or any party whose lands are liable to assessment for damages awarded, if they feel aggrieved, may within thirty days after the filing of the viewers' award appeal to the district court of the county in which the proceedings are had by serving on the parties who have appeared in the proceedings before the viewers and filing with the county auditor a notice of appeal, stating that an appeal is taken to the district court from the award of the viewers, and filing with the auditor a bond in the sum of five hundred dollars, with sufficient sureties to be approved by him, conditioned if the award and decision of the viewers is sustained the appellant will pay the cost of the appeal and abide and satisfy any judgment the court may render against him in the premises. Before the taking of the appeal the auditor shall forthwith file with the clerk of the district court the original petition, the award and bond on appeal, and thereupon there shall be pending in the district court a civil action to determine whether any damage has been done the land described in the petition, that come within the provision of section thirty-nine [6728]

of this chapter and the amount of such damages, and such action shall be tried in the manner provided for the trial of civil actions. Any party may appeal from the judgment or any appealable order of the district court to the supreme court in the same manner as appeals in civil actions are taken. The final judgment in the action, if in favor of the petitioner, shall be certified to the county auditor, and assessment made in the manner provided in the last above section of this chapter, for the assessment of the award of the viewers. ('05 c. 230 § 41) [5567]

Order of court on appeal from assessment of damages, assessing appellant's damages and directing judgment, is not an appealable order under this section, or a final order appealable under § 6740 (104-227, 116+483; 104-527, 116+484). Does not authorize appeal from judgment establishing ditch (115-440, 132+749). The question of practicability of route and plan is for trial court (131-43, 154+617). Appeal (135-198, 160+493).

6731. Co-operation of state drainage board—The state drainage board is hereby authorized to co-operate with the board of county commissioners of each county wherein a county ditch or a portion of a judicial ditch is located or may be located in enlarging, extending, repairing or otherwise bettering any such ditch now completed or now or hereafter in course of construction, whenever, in their judgment, it is necessary or desirable so to do. ('05 c. 230 § 42) [5568]

6732. Obstructing or injuring work—Neglect of duty—Penalties—Any person wilfully or negligently obstructing, or in any way injuring any work constructed under the provisions of this chapter, or under any law of this state, relating to drainage, or allowing such ditch or drainage work to be injured or obstructed by his live-stock, horses or poultry, or diverting the water from its proper channel, shall be guilty of a misdemeanor, and shall also be liable to any and all persons or corporations, injured by such act, in treble damages. Any county auditor, clerk of court, member of the board of county commissioners, or other officer who refuses or neglects to perform any of the duties imposed upon him by this act shall be guilty of a misdemeanor, and shall also be liable to any person or corporation injured by said act, in treble damages. The county attorney of the proper county shall prosecute all criminal actions arising under this chapter. ('05 c. 230 § 43, amended '07 c. 367 § 7) [5569]

6733. Orders and notices—How served—All orders and notices herein prescribed not otherwise provided for shall be issued by the auditor or by the judge, as the case may be, and the same shall be served by the sheriff or other disinterested person designated by the auditor or by the judge, as the case may be, and such sheriff or other person so designated shall be paid by the county for such services the same fees as are allowed by law for similar services. ('05 c. 230 § 44) [5570]

6734. Fees—Expenses—The following fees and expenses shall be allowed and paid for services rendered under this act. To engineers a sum not exceeding the sum of \$12.50 per day, to be fixed by the judge or the county board making the appointment, for every day necessarily engaged and actual and necessary expenses, including cost of bond. To each viewer the sum of \$5.00 per day for every day necessarily engaged in viewing ditches and traveling therefor and making up the reports and actual and necessary expenses. To each rodman a sum of not exceeding \$4.00 per day and actual and necessary expenses. To each chainman, axeman and other like employes not herein mentioned and necessary to the prompt execution of the work of locating or constructing a public ditch, a sum of not exceeding \$4.00 and actual and necessary expenses. To each member of the county board the sum of \$5.00 per day for each day actually occupied in proceedings to

establish or repair or inspect any ditch after its completion or during the course of the work if appointed as a committee for that purpose and the sum of 10 cents per mile each way for travel necessary in attending any special meeting of the county board called for the purpose of transacting any business pertaining to such ditch and for travel in inspecting ditches or any other necessary travel in said ditch matter. To the county auditor, county attorney, attorney for petitioners, clerk of the district court, the register of deeds and the sheriff performing duties thereunder, such reasonable compensation as shall be fixed by the county board or court as the case may be; and the fees and compensation of all such county officials in ditch proceedings shall be in addition to all sum and fees allowed them by law, provided that the fees of such auditor shall in no case be less than \$20.00 nor more than \$250.00. That the fees, compensation and expenses hereinbefore specified for members of the county board in drainage proceedings shall be in addition to all other fees, salaries, compensation and expenses allowed to such members of the county board by any other law of this state. That any and all claims for fees and expenses of members of county boards for services rendered and for expenses incurred, in drainage proceedings, for services rendered therein and for expenses paid out thereon since the 25th day of April, 1919, are hereby in all respects legalized and made valid, and all such claims remaining unpaid shall be paid by the proper county; that in all cases since the 25th day of April, 1919, where any member of the county board in this state has been paid in any drainage proceeding fees and expenses for services rendered, and for moneys paid out by him, all such payments are hereby legalized and made valid. In all proceedings where any county is directly interested the county attorney thereof shall represent the county unless otherwise provided by the county board. No county attorney or his assistants or any attorney associated with him in business shall otherwise appear in any drainage proceeding for any person or party whatsoever interested therein.

All fees per diem, compensation and expenses provided for in this act and fees for such other legal services and expenses as may be necessary, shall, in the case of a county ditch, be audited, allowed and paid upon the order of the county board and in case of a judicial ditch the judge of the district court having charge thereof shall audit, allow and order the same paid upon ten days' written notice to the county or counties interested, which notice may be given to the county auditor of the interested county or counties, that all bills on file with the clerk of court where such proceeding is pending at the date of such notice, will be brought on for hearing and for allowance at the time and place named therein.

And in all cases where a judicial ditch proceeding has, for any reason, been dismissed by the court, all fees and expenses connected therewith shall be audited, allowed and ordered paid in like manner.

The said judge or county board, as the case may be, may appoint a referee who shall be a consulting engineer in any ditch proceedings to perform the duties hereinafter set forth and such referee shall qualify by taking the appropriate oath and giving bond to the county or counties affected by such ditch in such sum as shall be fixed by such judge or board, as the case may be. Said bond shall be conditioned for the faithful performance of his duties as referee. Said referee shall be a qualified civil engineer. The fees of such referee shall be fixed by said judge or board, as the case may be, and shall be paid out of funds of such ditch as shall be ordered by said judge or board. It

6732R
177m 287
225nw 152
157-M 500
6734
200-NW 833
201-NW 621
202-NW 827

6734
61-M 66
61-M 400
62-M 258
00-NW 833

6734
67-M 458
09-NW 838
3-G.S. 6674N

6734R
175m 8
220nw 157

shall be the duty of such referee, if appointed, to consider all bills of account or applications for payment in such ditch proceedings and to hear evidence if offered in relation thereto and to report in writing to such judge or county board his approval, rejection or amendment thereof as such referee who shall also keep accurate record and account of all bills of account and all applications for payment acted upon by him and reported to said judge or county board, together with copies of all such reports and all reports and all proceedings had in relation thereto. It shall further be the duty of said referee by order of said judge or board to inspect and examine and make report upon all work of construction in the matter of such ditch prior to final acceptance thereof and for the purpose of making such examination or inspection and upon application of such referee the said judge or board may appoint and designate a competent and experienced civil engineer, other than the one officially acting as such in such ditch proceedings, to examine such ditch and the plans and specifications thereof and report thereon to said referee and it shall be the duty of such referee and if requested by such referee of said engineer to appear and testify before the judge or county board considering the final acceptance of such ditch. When order of said judge or county board approving a report of such referee and allowing a bill of account or application for payment in such ditch proceedings shall constitute and be construed as an accounting and allowing of such account by such judge or county board within the meaning of this section and the approval by said judge or county board of any order of said referee shall constitute the said report of said referee, the order of said judge or county board (in such proceeding, provided in all cases and said judge or county board) may reject such report and make an independent order in relation thereto covered by or contained in such report. Such referee shall be subject to removal at the pleasure of said judge or county board.

Any land owner, employe or other person aggrieved by any order of court or county board relative to the allowance of fees or fees and expenses may appeal from such order to the district court of any county in which the proceeding is pending and by notice given on or before the first day of the term, demand and obtain a jury trial. All such appeals shall be within thirty (30) days after the order allowing such claim and shall be governed as far as applicable by the provisions of Section 5534 of the General Statutes of Minnesota for 1913 [6687], save that in all appeals taken by parties whose lands are assessed for said improvements, then the expenses thereof shall be paid by the county and assessed against said improvement. ('05 c. 230 § 45, amended '07 c. 367 § 5; '09 c. 469 § 12; '11 c. 384 § 11; '17 c. 441 § 16; '19 c. 471 § 11; '21 c. 508 § 10.) [5571]

Time of fixing auditor's compensation (123-439, 143-971). Compensation of county auditor for other than his salary (135-275, 160+767). Compensation of county attorney for other than his salary (136-140, 161+382). The provision of this statute, prior to the amendment of '19 c. 471, under which the bill of the engineer was audited and ordered paid was unconstitutional, as not due process of law (138-186, 164+815). Order appointing relator as referee on all ditches in district is a nullity, being clearly unauthorized by this statute, prior to amendment of '19 c. 471 (138-204, 164+817). Distinguishing from (138-186, 164+815, and 138-204, 164+817), the county is deemed an agency of the state devoid of proprietary capacity and in that sense not a party interested in sufficiency of notice to constitute due process (140-30, 167+115). Constitutionality (140-465, 168+348). The decision in (138-204, 164+815) is followed and adhered to (147-24, 179+569). Duties of referee under statute and as imposed upon him by the court (147-292, 180+119).

6735. Quorum of viewers—A majority of the viewers shall be competent to perform the duties required of them by this act. ('05 c. 230 § 46) [5572]

Majority being competent, disqualified viewer, does not invalidate action taken (137-273, 163+513).

6736. Act liberally construed—This act shall be liberally construed, so as to promote the public health, the construction and improvement of roads, and the drainage and reclamation of wet or overflowed lands. ('05 c. 230 § 47) [5573]

Cited (116-326, 133+971).

6737. Record as evidence—Every order of the county commissioners of any county, or the judge of the district court laying out and establishing any ditch or refusing to establish the same, under the provisions of this chapter, the record thereof, or a certified copy of such record, shall be prima facie evidence of the facts therein stated and of the regularity of all the proceedings prior to the making of such order. ('05 c. 230 § 48) [5574]

Cited (119-261, 138+24).

Final order is presumptive evidence of each step taken (137-271, 163+512). Order establishing ditch is prima facie evidence of regularity of proceeding (150-122, 184+678).

6738. Authority to enter lands—For the purpose of making examinations and surveys, the viewers, county commissioners and the engineer are authorized to enter upon any land and to do any act necessary for the proper performance of their duties; and any person attempting to prevent or interfere with them, in so doing, shall be punished upon conviction by the court as for a misdemeanor. ('05 c. 230 § 49) [5575]

6739. Stranger to proceedings cannot question same—**Liens, assessments and contracts not invalidated, when**—No person or corporation shall be permitted to take advantage of any error committed in any proceedings under this chapter, either by the county board, engineer, viewers, county auditor or other officer, person or persons, nor of any informality, error or defect appearing in the record of such proceedings unless the party complaining thereof is directly affected thereby. If the court shall at any time modify any assessment or assessments or enjoin the collection thereof, or release any person from liability thereof, it shall in no manner affect the rights or liability of any other person. Whenever a ditch has been established, either under the provisions of this chapter or any prior drainage law, by which the cost of construction was assessed against the benefited property or corporation, and the contract or contracts for the construction thereof has been or shall be let without collusion and in good faith and at a reasonable price, no defect or lack of notice in the letting, making or executing of said contract or contracts, and no variance between the advertisement and the contract as to length of time or manner in which said ditch shall be constructed, shall invalidate in any way the ditch liens or ditch assessments, nor shall the fact that said contract has been or may be let containing provisions different from the advertisement with reference to the time or method in which the proposed work shall be completed or constructed, in any way invalidate said contract, provided such extension of time or change of method was made in good faith and by reason of delay in obtaining bids for the construction of said ditch or for other good causes, and if such contract or contracts has been or shall be let with the approval of the engineer and auditor or auditors, and if said ditch has been or shall be constructed pursuant to the contract, the contractor may recover the contract price thereof from the county or counties and no ditch lien or ditch assessment shall in any way be delayed or invalidated by reason of such variance between the contract and the notice of letting thereof. ('05 c. 230 § 50, amended '07 c. 367 § 6) [5576]

Land owner, not damaged and not assessed is not entitled to certiorari (136-275, 159+758; 136-272, 161+576).

6736
157-M 500
6739
200-NW 471

6739
160-M 38

6740	108
157-M	195-NW
781	
6742	500
157-M	196-NW
666	

6740. Appeal to supreme court—Any aggrieved party, who claims damages or against whose property benefits are assessed, may appeal to the supreme court, as in civil actions, from any final order except an order establishing such ditch in proceedings under this chapter, made in district court, within thirty days after the filing of such order. The notice of appeal shall be served on the clerk of the district court and need not be served on any other person or corporation. ('05 c. 230 § 51) [5577]

Cited (115-440, 132+749).

Order vacating final order establishing ditch and granting rehearing of issues is not an appealable order (137-166, 163+126). Appeal is allowable from a final order confirming an assessment and upon appeal assessment is subject to question (135-460, 163+135).

6741. Pay of county board—None of the statutory provisions limiting the number of days that a county commissioner shall draw pay for or limiting the number of sessions, for attendance upon which such commissioner shall be entitled to mileage shall apply to any proceedings under this chapter. ('05 c. 230 § 52) [5578]

6742. Ditch defined—The word "ditch" as used in this act, shall be held to include any open, covered or tiled ditch and any drain, water course or creek, and any side lateral, spur or branch ditches and each and all of the constructions referred to in section one [6674] of this chapter, and the petition of any public ditch, may include any side lateral, spur or branch ditch necessary to secure the object of the improvement. ('05 c. 230 § 53) [5579]

6743. Acts repealed — Unfinished proceedings — Chapter 258 of the General Laws of Minnesota for 1901, chapter 38 of the General Laws of Minnesota of 1902, and chapters 178, 188, 311, 315 and 386 of the General Laws of 1903, and all other acts and parts of acts inconsistent with the provisions of this chapter are hereby repealed save as to unfinished proceedings thereunder. ('05 c. 230 § 54) [5580]

6744. Construction and maintenance of ditch by petitioners—In case the petitioner or petitioners shall offer to construct and maintain such county or judicial ditch at their own expense, the petition need only offer so to do, and set forth; the public utility or benefit to the public health resulting from such work; a general description of the proposed ditch with its starting points, termini and routes, as nearly as the same can be determined; a description of all lands to be crossed or otherwise damaged thereby, with the name of each owner thereof, if the same is known, or can be ascertained with reasonable diligence; all public highways, corporate roads and railroads to be crossed or otherwise damaged thereby, with the names of the towns in which such public highways are located, and of the corporation owning each corporate road and railroad. For further certainty the petitioner or petitioners may file in the office where the petition is required to be filed any maps, plat or specifications describing the proposed ditch, which, when so filed, may be referred to in said petition. All provisions of this chapter shall apply to ditches thus petitioned for, so far as consistent with the special provisions relating thereto. ('05 c. 230 § 55) [5581]

139-115, 165+875.

6745. Bond—The petitioner or petitioners shall also accompany said petition with a bond to the county, in case of a county ditch, and to the respective counties in case of a judicial ditch, for the benefit of such county or counties, and of all persons and corporations interested in an amount to be fixed, and with securities to be approved by the county auditor in the case of a county ditch and by the court in case of a judicial ditch, conditioned to pay all damages that may be awarded

or assessed, and all fees and expenses that may be paid or incurred in the proceeding under said petition. ('05 c. 230 § 56) [5582]

6746. Hearing—Notice—The county auditor in case of a county ditch and the clerk of the district court in case of a judicial ditch shall, upon the filing of such petition and bond, fix a time and place for the hearing of said petition, not more than forty nor less than fifteen days from said date of filing, and at least ten days before said hearing, a copy of such petition preceded by a statement of the time and place set for such hearing thereon shall be posted in three public places in each township where the proposed ditch is located and shall be served on all persons and corporations named in said petition, who are residents of the state, and upon the persons, if any, actually occupying any tract of land described in the petition, which belongs to persons or corporations that are nonresidents of the state, in the manner provided by law for service of summons in district court, and shall be mailed to all persons and corporations named in said petition, who are non-residents of the state, and whose address can be obtained by inquiry at the office of the county auditor, or at the office of county treasurer of the respective county or counties. ('05 c. 230 § 57) [5583]

6747. Appointment of viewers—Report—If, upon the hearing, the court or board of county commissioners, as the case may be, shall find the proposed ditch of general and public utility, or beneficial to the public health, it shall appoint three disinterested persons as viewers, and shall fix a time and place for hearing the report of said viewers. Such viewers shall have the same qualifications, and shall take the same oath and shall receive the same compensation as the viewers provided for in section six [6681] of this chapter, except that if any one of them is a civil engineer he need not be a freeholder. Said viewers, one of whom may be a civil engineer, shall file at least ten days prior to the time set for hearing thereon, a report showing either by direct statement, or by reference to any maps, plats, specifications or other papers on file in said proceeding, the location and character of the proposed ditch over and across said lands, public highways and railroads; place of entrance, course through and exit from each tract of land; the size and depth of said ditch; when it shall be constructed; how kept in repair; what connections may be made therewith; what compensation, if any, shall be made to the owners of such tracts of land, or to any public or private corporations, or to any persons for damages by reason of such construction. In locating a public ditch in a proceeding under such petition, the viewers shall vary from the starting points, routes and termini described in said petition no more than is necessary to enable said ditch to reasonably effectuate the purpose for which it is intended. ('05 c. 230 § 58) [5584]

142-163, 171+317.

6748. Hearing by county board—Order—Damages—At the time appointed for said hearing on such report, the board of county commissioners or the court, as the case may be, shall consider and pass upon any objections filed and any competent evidence offered and shall correct and change said report and the assessments therein contained, as justice may require, and may continue the hearing from day to day, not to exceed thirty days, and to a different place. The board of county commissioners or the court, as the case may be, shall thereupon make its order laying out and establishing said ditch, and confirming such report as changed and permitting the construction of such work, upon the payment or tender of damages as finally assessed, but such order shall be void unless

such damages are paid or tendered within one year after the filing of the final order of the board of county commissioners or the final order of the district court on appeal in a county ditch proceeding, or within one year after the filing of the final order of the district court in a judicial ditch proceeding. If in any case there shall be doubt as to who is entitled to damages awarded or assessed, or if the person entitled thereto cannot be found, such damages may be paid into the office where the original petition was filed, for the person or persons showing themselves entitled thereto. ('05 c. 230 § 59). [5585]

6749. Appeal—Any aggrieved party may appeal from that part of such order of the board of county commissioners fixing the amount of his damages or the damages awarded to any person or corporation by filing the notice and bond required by section 12 [6687] of this chapter and the county auditor shall in such case make and file a transcript as required by section 12 [6687] of this chapter. ('05 c. 230 § 60) [5586]

6750. Right to enter land—The viewers shall have the right to enter on any lands for the purpose of estimating damages and of locating such ditch and after payment or tender of damages the petitioners may, in like manner enter upon such lands for the purpose of constructing, maintaining or repairing such work. ('05 c. 230 § 61) [5587]

6751. Agreement as to damages—The bondsmen for the petitioners may agree with any person claiming or entitled to damages as to the amount thereof; such agreement shall be filed in the office where the original petition was filed and in such case lands covered thereby shall not be considered by the viewers. ('05 c. 230 § 62) [5588]

6752. Order draining meandered lake—Appeal—Whenever any order of the board of county commissioners made and entered as herein provided drains in whole or in part any meandered lake, any person or corporation aggrieved by any such order, or any taxpayer residing within four miles of any meandered lake affected by any such order, may appeal to the district court from any such order and the procedure and manner of taking such appeal shall conform to the provisions herein set forth for other appeals. Such appeal shall bring before said court all questions and proceedings involved in such order. Provided, that the party taking such appeal shall accompany the same with an appeal bond to the board of county commissioners with at least two freehold sureties in the sum of one thousand dollars, to be approved by the auditor of the county in which such appeal is taken, conditioned that said appellant will duly prosecute the appeal and pay all costs that may be adjudged against him, and to abide the order of the court. ('05 c. 230 § 63) [5589]

Cited (115-440, 132+749).

Appeal to District Court from order of county board for drainage of meandered lake (128-70, 150+209). Trial de novo on appeal (142-37, 170+883).

6753. Omissions—Supplementary statement for assessment—If any items of the cost of a ditch established under this or any prior drainage law by the terms of which the cost of construction is assessed against the benefited property or corporations, from its inception to its completion, has been or shall be omitted from the original tabular statement for assessment made and filed by the auditor, with the register of deeds, then a supplementary statement for assessment shall be made by said auditor in the same form and manner as the original statement, so far as practicable, showing such omitted costs, which supplementary statement for assessment shall be filed for record in the office of the register of deeds and shall be due, payable and collectible in the same manner, time and

form as if a part of the last annual installment of the original assessment. ('05 c. 230, amended '07 c. 367 § 8) [5590]

6754. Reassessment of benefits and damages in certain cases—In all cases where ditch liens or ditch assessments are made or levied under the provisions of this law or any other prior drainage law by which the cost of construction was assessed against the benefited property or corporations, have been or may hereafter be set aside, vacated, annulled or cancelled for any reason, a reassessment of the estimated benefits and a reaward of damages, or either, may be made by the county board of the county in which the affected land is situated. Three weeks' written notice of the time and place of hearing therefor shall be served on all owners, land owners, and interested parties in the same manner as provided for the service of a summons in the district court, and appeals to the district court from such reassessment of estimated benefits or reaward of damages, or both, may be taken under the same regulations and in the same manner and form as provided in sections twelve [6687] and thirteen [6688] of this chapter. And as soon as practicable after the expiration of the time for appealing or after final judgment, if appeal is taken, the county auditor shall multiply said benefits by the same rate of cost on each dollar of benefits that other lands benefited by said proposed ditch were or shall be required to pay. A statement thereof shall be filed in the office of the register of deeds by the county auditor in the manner and with the same force and effect as the statement provided for in sections nineteen [6703] and twenty [6705] of this chapter, and the amount which said tract of land will be liable to pay—shall be due, payable and collected in the same manner, time and form, as nearly as practicable, as the liens mentioned in sections twenty-one [6712] and twenty-two [6713] of this chapter. ('05 c. 230, amended '07 c. 367 § 9) [5591]

Power of abatement of assessment by tax commission and reassessment (137-40, 162+687).

6755. Sale of job for more than estimated cost—Distribution of increase—Whenever it is made to appeal to judge of the district court or to the county board by petition setting forth the facts, which petition may be presented by the county attorney or the attorney for the petitioners, that the county auditor or auditors of the respective counties in which such ditch is located, is unable to sell the jobs for the letting of said ditch, and the work necessary for the construction thereof, as shown by engineer's report, on account that the estimated cost of the construction of said work for the whole of said ditch, or any separate portion thereof which may be sold separately, is 30 per cent less than any offer or bid received for the same, and said petition shall set forth the amount of said estimated cost, and the amount of said offer or bid for the job, for the construction of the same, and the judge or the county board, as the case may be, may proceed to hear and determine the same without notice or with such notice as is considered necessary and as is ordered by said judge or said county board, as the case may be, and the said judge or county board, as the case may be, may by an order direct the county auditor or county auditors, as the case may be, to sell such job of work to such responsible bidder for the amount not exceeding that stated in said petition as offered by the lowest bidder for said work, and the said judge of the district court or county board, as the case may be, shall thereupon amend the findings so as to equitably distribute such increased costs for the construction of said ditch, or such part thereof that may be embraced in said petition and original findings

among the several land owners affected by such change or changes in the cost of the construction of the same, and in proportion to the assessments made under the original findings, and the county auditor or several county auditors, upon receipt of a certified copy of such amended findings shall file same and shall include such additional amounts in the statement required by section 19 [6703] of chapter 230 of Laws of 1905 to be made by said auditor or auditors; and same shall be entered and collected in like manner as is provided by law for the collection of the assessments for benefits for construction of such ditch. ('05 c. 230, amended '09 c. 469 § 13) [5592].

6756. Appeal to supreme court—Any party who claims damages or against whose property benefits are assessed may appeal from the district court to the supreme court as in civil actions from any final appealable order, except an order establishing such ditch or drain in proceedings under this chapter, within thirty days after the filing of such order, by filing the notice of appeal, and bond required as in civil actions upon an appeal to the supreme court. The appellant shall also serve a copy of the notice of appeal and bond on the respective attorneys of record in the proceedings, and file proof thereof with the clerk. In case the appellant prevails in the supreme court, and the cost of the construction of said ditch or drain is increased on account of said appeal having been determined in favor of appellant, and damages or costs are awarded to the appellant, upon a remittitur from the supreme court to the district court, the clerk of the district court shall notify the judge of the judicial district wherein such appeal was taken, whereupon the judge shall make an order directing the county auditor, or auditors, if in more than one county, to pay the amount adjudged to be due the appellant upon such appeal, together with his costs. If said appeal involves land in more than one county, the judge shall order such sum to be paid proportionately out of the general ditch fund of each county, in proportion to the amount assessed upon the lands in each county for the construction of said ditch. Thereupon the auditor or auditors of each county shall issue county warrants upon the county treasurer for such sum or sums and payable out of the general ditch fund in the county treasury. The said auditor shall thereupon, or in case the same is in more than one county, the several auditors, shall distribute the amount so paid among the several land owners who were originally assessed for the construction of said ditch, drain or water course and enter the same upon tax duplicates against said respective lands, in the same manner and proportion as provided for in the original order in said proceedings, which said additional amount shall become a lien against the said land, and be due and payable in the same manner as provided for in sections twenty-one [6712] and twenty-two [6713] of this act. ('05 c. 230, amended '09 c. 469 § 13) [5593].

Right of appeal not extended to petitioners for the ditch. *Certiorari* lies (116-424, 133+1010). *Certiorari* reviewing ditch proceedings (137-265, 161+714).

6757. Right of way in adjoining state—If the engineer finds that there is no practicable or feasible outlet for a ditch except through the lands of an adjoining state, he shall include said findings in his report, together with an accurate description of the needed right of way in such adjoining state and his estimate of the cost of obtaining the same. If such finding is confirmed in the final order establishing said ditch, the county board or judge or judges of the district court making said order,

(a) Shall require the county auditor, in case of a county ditch, or the auditors of the respective counties,

in case of a judicial ditch, to purchase such needed right of way at an expense not exceeding the estimated cost therefor specified in the engineer's report; said right of way to be paid for as part of the cost and expenses of said ditch, and

(b) Shall provide in said final order establishing said ditch that the jobs of digging and constructing the ditch shall not be advertised, let or sold until such purchase of such needed right of way in such adjoining state has been in all things completed. ('05 c. 230, amended '09 c. 469 § 13) [5594].

6758. Obstructing or injuring work—Neglect of officer—Penalties—Any person wilfully or negligently obstructing, or in any way injuring any work constructed under the provisions of this chapter, or under any other law of this state relating to drainage, or diverting the water from its proper channel, and any person who is not authorized so to do by the engineer in charge of any ditch, and who wilfully changes or alters the location of or the markings on any stakes set, placed or marked by such engineer or under his direction in the matter of laying out or the construction of any ditch, and any person digging or constructing or causing to be dug or constructed any ditch or drain which thereby empties into any ditch or drain constructed under the provisions of this chapter without having first secured permission from the county board of the county in which such principal ditch or drain is located, shall be guilty of a misdemeanor, and shall also be liable to any person, persons or association of persons or corporation injured by such act, in treble damages. Any county auditor, clerk of court, member of the county board, or any other officer who refuses or wilfully neglects to perform any of the duties imposed upon him by this act, shall be guilty of a misdemeanor, and shall also be liable therefor to any person, persons, association of persons or corporation injured thereby, in treble damages. The county attorney of the proper county shall prosecute all criminal actions arising under this chapter. ('05 c. 230, amended '09 c. 469 § 13) [5595].

6759. Ditch extending into other judicial district—Jurisdiction—In case any proposed ditch extends into any other judicial district, proceedings may be commenced before the judge of either of said judicial districts and the judge before whom such proceedings are commenced shall thereafter have jurisdiction of all subsequent proceedings and matters in relation to said ditch, and every order made by the judge laying out or establishing any drain, ditch or water course, or refusing to establish the same, and every order made in relation thereto under the provisions of this chapter and the record thereof, if recorded, or a certified copy of such record shall be prima facie evidence thereof, and of the facts therein stated, and of the regularity of all the proceedings had therein. Provided, that if for any reason during the pendency of any proceeding thereunder, the court or county board for any reason shall fail to hold a meeting or hearing at any time pursuant to any previous order made therein for the holding of any special or adjourned meeting or hearing in relation to any matter connected with said proceedings, the court or county board shall not lose jurisdiction of such proceedings, but may make any new additional order that may be necessary in the premises or that justice may require, in order to arrive at a speedy determination of all matters connected with said proceedings, and the final completion of the ditch, drain or water course petitioned for. ('05 c. 230, amended '09 c. 469 § 13) [5596].

6760. Joint action with other states for construction of drainage ditch and proceedings for same—

Whenever it is necessary to construct, widen, deepen, straighten, or change any drainage ditch or water course lying on, along or near the state line between this state and any adjoining state or country, or whenever it is necessary to repair or improve any drainage work provided for in this act, which drainage ditch, water course or other drainage work, cannot be constructed, repaired, or improved in the best manner without extending the same into an adjoining state or country, and thereby affecting lands therein, the county board of the proper county or the judge of the proper district court before whom such ditch proceeding is pending in a county or counties adjoining or near such state line, shall have power to join with the board or tribunal of such adjoining state or country having power to lay out and construct public drainage ditches in such adjoining county or district of another state or country, in the construction, widening, deepening, straightening, repairing or improving of any such drainage ditch, water course or other work of drainage. Such board or tribunal in this state shall have the power to enter into joint contracts or arrangements with such board or tribunal in such adjoining state or country and construct, repair or improve any such drainage work, each to pay such share of the costs and expenses of such work as shall be agreed upon by the contracting bodies. Such work of drainage and the construction thereof, so far as it relates to lands in this state; shall be done on petition of owners of lands as provided for in the drainage laws of this state relating to county or judicial ditch proceedings, and the provisions of such laws so far as applicable shall govern such county board or district judge, as the case may be, in relation to such joint work of drainage. Provided such adjoining county or district in another state or country shall pay its proper share of the necessary costs and expenses of the construction of any such ditch or work including damages. In case the benefits to lands in such adjoining state or country are not sufficient to pay all costs of construction, repair or improvement of such ditch therein, including damages to lands therein, such board or judge, as the case may be, is hereby given the power to contribute sufficient funds to complete the construction, repair or improvement of such ditch in such adjoining state or country, if the same will be of sufficient benefit to the lands in this state affected by such drainage work, to warrant such contribution. ('15 c. 268 § 1)

6761. Side lateral and spur ditches—After the completion of any ditch constructed under any law of this state, excepting state or town ditches, no public or private, or side lateral or spur ditch or ditches draining lands or property not assessed for benefits in such main ditch proceeding shall be so dug or constructed by any person or persons or any association of persons or by any corporation or any township or other municipal corporation or the authorities of either of them without having first secured express authority so to do from the county board of the county where such principal ditch is located, in case of a county ditch or in case of a judicial ditch the district court that originally ordered the construction of said ditch.

Such proceedings shall be instituted by a petition to the county board filed with such county auditor in case of a county ditch and to the district court and filed with the clerk of said court in case of a judicial ditch, and signed by parties interested in and affected by said proposed branch, setting forth the source, course, terminus and the size and dimensions of said proposed side lateral or spur ditch.

Thereupon the said auditor in case of a county ditch or the clerk of the district court by direction of the

judge in case of a judicial ditch shall appoint a time and place to consider the same and said auditor shall call a special meeting of the county board in case of a county ditch, to meet at such time and place for that purpose and in either case shall cause notice thereof to be published once each week for two successive weeks in a newspaper published in the county or counties affected, and in case of a judicial ditch notice shall be served upon the county auditor of each county affected at least ten (10) days before the date for such hearing.

The said county board or district court as the case may be, may employ a competent and experienced civil engineer to investigate and report on the matter contained in said petition.

On the day of hearing so appointed, or at any adjourned day thereof, the county board or district court as the case may be, shall proceed to hear all testimony offered in relation to said matter, and shall determine and decide the same; and if the county board or district court decide to permit such branch or lateral ditch to be built, or such other ditch to empty therein, determine and decide the terms and conditions under which same may be built, and the amount to be paid by petitioners therefor, if any, and upon compliance therewith and not otherwise, said petitioner or petitioners may proceed to construct and complete said private ditch or side lateral or spur ditch so petitioned for. ('09 c. 469 § 13, amended '11 c. 384 § 15; '19 c. 471 § 12) [5597]

Not applicable to judicial ditch (116-326, 131+476).

6762. Sewerage system to connect with ditches—

A. The appropriate county board in the case of a county ditch and the appropriate district court in the case of a judicial ditch upon such terms as such board or court may deem proper may permit any municipality having a population of two thousand five hundred (2,500) or less to drain into any drainage ditch now or hereafter to be constructed, the overflow from any properly constructed and operated sewage treatment plant subject to the following conditions:

(1) Such overflow shall empty into the drainage ditch at a point below the limits of the municipality or below the settled portion thereof and where the waters from the ditch may not flow back and flood the sewerage plant.

(2) Storm waters from the municipality shall not be permitted to enter or run through the sewage plant. Provided, however, that in all cases where sewerage systems now exist or are in process of construction in which the storm waters have access to the sewage plant, such systems may nevertheless continue in operation where they have been approved by the state board of health, and where they shall from time to time be modified and corrected in such manner as may be specified by the state board of health.

(3) No such overflow into any drainage ditch shall be permitted unless the same has first been rendered sanitary and inoffensive.

(4) The municipality shall pay for such outlet to the appropriate district such amount as the board or court shall direct.

B. In case the drainage ditch has been petitioned for but not yet established, any municipality desiring to take advantage of the provisions of this act shall present to the county board or district court, as the case may be, a petition signed by the governing body of the municipality, asking that such municipality be made a party to such drainage proceedings, and that the municipal sewer system then in operation or thereafter to be constructed may be connected with such drainage ditch, and that sewage therefrom being first

passed through a proper treatment plant and rendered sanitary and inoffensive may be discharged into such drainage ditch.

C. The petition provided for in the preceding section shall be accompanied by plans and specifications which shall show in detail the existing or proposed sewer systems so to be connected, the method of treatment of the sewage to be discharged into such drainage ditch and such plans and specifications which shall contain the endorsement of the state board of health to the effect that the method of reduction and treatment of such sewage and the plans which connect such sewer system with such drainage ditch have been examined and found to be practicable and sanitary. The county board or court, as the case may be, shall thereupon appoint a time and place for the hearing of said petition and shall give such notice thereof to the appropriate clerk of court or county auditor, as the case may be, and to all persons whose lands are assessed for the construction of said ditch as the board or court may prescribe. At the time and place so appointed the board or court shall proceed to hear and determine said petition, and may take such evidence as it deems proper, and if it is satisfied that such connection can be made advantageously and without endangering the public health, an order shall be made making such municipality a party to said drainage proceedings, determining the amount which such municipality shall pay to such drainage district for the privilege of casting the overflow from its sewage system into said drainage ditch and determining the time when such payment shall be made, and directing further that when such conditions are complied with that connection with such drainage district may be made, and provide such further conditions as it may deem proper to protect the rights of the parties in interest and the general public.

D. In case said drainage ditch has already been established, a like petition shall be made to the county board or court, as the case may be, by the governing body of such municipality, whereupon said board or court shall fix a time and place for hearing the same and cause such notice thereof to be given as the court or board may prescribe to the county clerk of court, as the case may be, and to all parties whose lands are assessed for the construction of said drainage ditch. At the time and place of hearing so fixed the court or board shall proceed to hear and determine said petition in the same manner provided for in the preceding section, and after said hearing the court or board, as the case may be, may, if it deems proper, order that said connection be made and fix the amount which said municipality shall pay, and the time within which it shall pay the same to the drainage district affected, and provide such further conditions as it may deem proper to protect the rights and interests of the public and all the parties whose land have been assessed for the construction of said ditch.

E. Any municipality interested in any project hereinafter specified may acquire by purchase or condemnation the necessary right of way over any lands within or without such municipality for the construction of such sewage plant and overflow drain and proceedings to condemn such land may be made and instituted by such municipality and prosecuted to final judgment under the statutes of this state in respect to the taking of property by right of eminent domain, and all of the general laws of this state in respect to the condemnation of property shall apply thereto and govern and control such proceedings. The cost of the condemnation and acquisition of such right of way as well as the amount required to be paid for the right

to make such connection and all other expenses incurred by such municipality in the establishment and construction of such overflow drain shall be paid from the general fund of such municipality. In case of the denial by the court or board, as the case may be, of any petition in this act provided for, the municipality in whose behalf the same was made, shall pay the costs of the proceedings to be taxed in the usual way.

F. In all cases pending before the county board any interested party feeling aggrieved by any order made by such board either granting or denying any such petition may appeal from any such order to the district court of the county in which said proceedings are pending. The proceedings on such appeal shall be the same as those provided in section 5534, as amended, of the Revised Statutes of Minnesota for the year 1913 [6688]. ('19 c. 471 § 13)

6763. Proceedings begun under other provisions, how completed—Application—Hearing—In all cases where petition has been made for the construction of a drainage ditch under any of the provisions of the drainage laws of this state now or heretofore existing, the same may be considered and completed under the provisions of this chapter by the county board or the judge of the district court at the election of the bondsmen and sureties thereon upon written application of said bondsmen and the sureties thereon made to said county board or the judge of the district court. Upon the receipt of said application the said county board, or the judge of the district court, as the case may be, shall fix a time and place for the hearing of said application and shall cause a two weeks' published notice thereof to be given to all parties interested, and at the time and place of the hearing thereof the county board or the judge of the district court, as the case may be, shall hear and consider the same and if found to be of sufficient public benefit, shall order the said pending ditch proceedings to be heard and completed under the provisions of this chapter and thereupon the said county board or the judge of the district court, as the case may be, shall have full and complete jurisdiction thereof for the purpose of completing the proceedings thereunder the same as if the said ditch proceedings had been originally commenced under the provisions of this chapter. Provided, that whenever in proceedings in the district court of this state the construction of any ditch heretofore or hereafter ordered by the county board under any drainage law of this state by which the cost [s] for construction were or are assessed against the benefited property, was or is restrained or enjoined by said court for any reason, that within one year after the entry of final judgment in such proceedings any person whose land is liable to be assessed therefor may cause the entire proceedings relating to said ditch to be transferred to the judge of the district court in the judicial district where the same is pending, by service of a notice of motion to that effect, eight (8) days before the date of hearing on said motion, upon the county auditor, chairman of the county board, and the parties upon whose motion the construction of said ditch was enjoined or the attorneys representing them in such proceedings. The county auditor, upon service of the notice of such motion, shall forthwith transmit to the clerk of the proper district court all original papers filed in said matter. At the time named for the hearing of such motion or on any date to which the same is continued, upon proof of the service of such notice of motion, the court shall proceed and consider the same and the viewers' report, the same in all respects as if such proceedings had been originally commenced in said court, and due notice thereof given as provided in this chapter, and the report of the viewers, appointed in such proceedings

by the county board shall by the court on such motion be considered the same in all respects as if the viewers had been appointed by the court in proceedings originally commenced in said court, and the court shall thereupon make such findings as justice may require, and may order said ditch constructed in conformity with the provisions of this chapter, and all further proceedings relating to said ditch shall be had before such court, the same in all respects as if the same had originally been commenced therein. ('05 c. 230, amended '09 c. 469 § 13) [5598]

'21 c. 390 legalizes and validates bonds issued in proceedings heretofore, and makes same binding obligations, where same result from the cleaning and repairing, etc. of ditches; exempting pending actions.

6764. Repeals—That section numbered 3½ and section numbered 10 of chapter 367 of the Laws of Minnesota for the year 1907, and all of chapter numbered 448 of the General Laws of Minnesota for the year 1907, and all of chapter 44 of the Revised Laws of 1905, be and the same is hereby expressly repealed, save as to pending proceedings under said chapter 448 of the General Laws of Minnesota for the year 1907, which pending proceedings may be completed under the provisions of this chapter, if so elected as hereinbefore provided. ('09 c. 469 § 14) [5600]

6765. Change of method of construction or alteration or location of drainage ditches and proceeding for same—Whenever proceedings have been or hereafter shall be taken to lay out a drainage ditch according to law and the same has been or hereafter shall be laid out and established, and the contract for the construction thereof let, and it has been or thereafter shall be found to be impossible, by reason of unfavorable weather or other good cause, for the contractor to construct the same, and the engineer in charge of such ditch concludes, after examination, that better results can be obtained by a different method of construction, thereupon, upon a petition of not less than seventy-five per centum of the owners of the land affected by the construction of such drainage ditch, as shown by the viewers' report in such proceedings, and upon the filing with the county auditor of the county where such proceedings are pending in case of a county ditch, or with the clerk of the district court where such proceedings are pending in case of a judicial ditch, by said contractor and his bondsmen of an agreement in writing consenting thereto, the said county auditor or county clerk or county auditors, as the case may be, may alter or modify the contract theretofore entered into with such contractor as to the manner, method or time within which such drainage ditch shall be constructed, in accordance with the recommendation of the engineer in charge thereof, upon the filing of such recommendation with such auditor, or auditors, or clerks as the case may be.

Provided further, that if, after the establishment of any county or judicial ditch, and before the completion thereof, it shall become apparent that said ditch or any of the branches thereof should be enlarged, deepened or otherwise changed or that a change or alteration in the location should be made for the better service thereof, the county board in case of a county ditch or the court in case of a judicial ditch may authorize such change or changes as the engineer shall recommend. Provided, however, that before any action shall be taken by the court or the county board, as the case may be, a petition signed by twenty-five per cent of the resident owners of lands affected by said ditch as named in the order establishing said ditch not exceeding in any case more than fifty such resident owners shall be filed with the county auditor if a county ditch, or with the clerk of court if a judi-

cial ditch, setting forth the necessity for the changes or alterations in said ditch, and at the time of filing such petition one or more of such petitioners shall give a bond with good and sufficient freehold sureties payable to the county to be approved, including amount and sureties, by the court or the county auditor, as the case may be, conditioned to pay all expenses in case the county board or the court shall fail to make the alteration or change prayed for in said petition. The same notice shall be given as is given on the filing of an original petition for a new ditch. If upon the hearing of said petition the county board or the court, as the case may be, from the evidence considers it necessary or advisable that changes or alterations be made in said ditch, either in size, location or otherwise, the county board or the court, as the case may be, shall have authority to resubmit the same to the engineer who had charge of said ditch or appoint a new engineer to re-examine said ditch and make report as to changes or alterations he may deem necessary for the betterment of said ditch. Said engineer shall within thirty (30) days make report thereon as to the changes and alterations thereon for the improvement of said ditch. If changes and alterations are recommended by the engineer in said ditch, the viewers shall re-examine said ditch with the proposed changes and alterations and shall within twenty (20) days, after the filing of said engineer's report, file with the auditor or with the clerk of said court, as the case may be, their amended viewers' report.

Upon the filing of the amended viewers' report with the county auditor in the case of a county ditch or with the clerk of the district court in the case of a judicial ditch, the county auditor or clerk of court, as the case may be, shall give the same form of notice as was given on the filing of the original viewers' report, and thereupon procedure identical with the proceedings of sections 5531, 5532, 5557 and 5558, General Statutes of Minnesota, for the year 1913 [6684, 6685, 6720, 6721], and amendments thereto, as the case may be, shall be had and followed, and the court or the county board, as the case may be, shall have the same powers as provided by law as upon the hearing of the original viewers' report thereon. ('07 c. 138 § 1, amended '17 c. 350 § 1) [5601]

6766. Engineer's report—Notice of hearing by board or judge—Supplementary order—If said contract is so modified or altered the engineer shall report to the board of county commissioners in a county ditch, and to the judge of the district court in a judicial ditch, the difference, if any, in the cost of construction, and the difference, if any, in the benefits that will accrue to benefited lands or public roads, and the difference, if any, in the damages which will result to lands or property by reason of such modification or alteration, and the changes, if any, which should be made in the order establishing said ditch, or in the viewers' report, or in the engineer's report therein, as may be necessary to make the same conform to said modified or altered contract. Such board or judge, as the case may be, shall thereupon cause to be given three weeks' published notice in the official paper of the county or counties, as the case may be, in which the ditch is situated, of the time and place of the hearing to consider the questions and issues involved in said report of said engineer, and to modify as may be necessary the original order establishing the ditch. Said hearing shall be conducted, as nearly as practicable, in the same manner as the hearing for establishing a ditch provided for in chapter 230 of the General Laws of 1905, and such board or the judge, as the case may be, may thereupon make a supplementary order modifying or amending the original order establishing a ditch or

the viewers' or engineer's reports therein, or each or all of them as necessity may require, which order shall be supplementary to and amendatory of the original order establishing the ditch, and shall be filed and may be appealed from in the same manner and form as an original order establishing a ditch under said chapter 230 of the General Laws of 1905, and shall have the same force and effect as if a part of the original order establishing such ditch. ('07 c. 138 § 2) [5602]

6767. Acceptance by engineer—The engineer shall accept the said ditch or any part thereof constructed under such modified or altered contract in the same manner as is now provided by law for the acceptance of the construction of public ditches under chapter 230 of the General Laws of 1905. ('07 c. 138 § 3) [5603]

6768. Modification of contract by agreement—Nothing herein contained shall in any manner prevent the persons whose lands are affected by the construction of any such county or judicial ditch from uniting in a written agreement with the contractor and his bondsmen for the alteration or modification of any such contract which the engineer may in writing recommend and to which he shall consent, as to the manner or time within which such ditch or drain shall be constructed. Thereupon the contract shall be deemed to be so altered and modified, upon the filing of said agreement and recommendations and consent with such county auditor, or county auditors, or clerk of the district court, as the case may be, and said ditch construction shall thereupon be accepted by said engineer with reference to such altered or modified contract. ('07 c. 138 § 4) [5604]

6769. Procedure for improvement of outlets—In any case where one or more ditches or drainage improvements whether open or tiled, whether public or private, shall have been or are being constructed, or may hereafter be constructed, or for the construction of which proceedings have already been, or may hereafter be, initiated, the waters from which do or may empty into any creek, draw, watercourse or body of water, whether meandered or not, and the construction of said ditch or drainage improvement shall cause or is likely to cause by reason of the added waters, the overflow of the waters of said creek, draw, watercourse or body of water, and the inundation of the adjoining land, then, and in that event, upon the filing of a petition by the county board of any county affected, or by not less than four freeholders whose property is affected by such overflow, with the clerk of the district court of any county affected by such proposed improvement, setting forth in general terms the existence of said ditch or ditches and the conditions of said creek, draw or watercourse or body of water and outlet, and the necessity for the improvement of said outlet, and if need be, the controlling of said waters therein or in said body of water, or both, and that said proposed improvement will be a public benefit and utility and improve the public health and protect said land from overflow, and asking for the consolidation of all said ditches or ditch proceedings, whether public or private, connected with or emptying its waters into said outlet or into said body of water into one system, and the extension of the same so as to furnish a proper outlet for all waters of said basin that naturally drain into or through said outlet, and that the cost of constructing such outlet shall be borne by all of the lands to be benefited, and that in order to equitably apportion the cost of the construction of said improvement on the extension of said outlet to all the lands to be benefited, it is necessary that such proceedings be merged and consolidated, and said petition shall be accompanied by a proper bond as provided in section 4 of this law; thereupon the clerk of said court

shall notify the judge thereof and said judge shall make an order fixing the time and place for hearing upon said petition and ordering all proceedings then pending in any or all of said ditch proceedings to be stayed until the hearing and determination of said petition, which petition and order shall be served upon all persons and parties interested in such ditch proceedings by publication thereof once a week for three successive weeks prior to the date of such hearing, in a legal newspaper in each county in which such proposed ditch or ditches or any part thereof are situate, and if any such proposed ditches are pending before the county board of any county, such petition and order shall be served upon the county auditor and clerk of the district court of such county. ('11 c. 54 § 1, amended '17 c. 441 § 17) [5605]

Scope of '17 c. 441 §17 as to formation of drainage districts (142-494, 171+922). Statute and amendment construed (145-33, 176+182).

6770. Hearing—Order—Engineer—Upon such hearing the judge shall proceed to hear all testimony offered in relation to said matter, and if it be made to appear that the allegations of such petition are true, and that the same should be granted, he shall make an order granting said petition and merging and consolidating all of said ditch proceedings, and giving to said ditch proceeding, as consolidated, a title and number by which it shall in all subsequent proceedings be designated, and appointing a competent engineer to make such additional surveys, and such changes and modifications of the surveys, reports, plans and estimates theretofore made, as may be necessary, and fixing the time within which such modified and amended report of the engineer shall be filed in the office of the clerk of the district court of said county. ('11 c. 54 § 2) [5606]

6771. Viewers—Proceedings—Upon the filing of such modified and amended report of the engineer, the judge shall appoint three viewers to assess the benefits and damages in said proceeding in accordance with the provisions of the drainage laws of this state, and thereafter said proceeding shall be continued and carried to final determination under the general drainage laws of this state as though originally commenced as one proceeding before said judge. ('11 c. 54 § 3) [5607]

6772. Ditches in counties created after petition—Transfer of files—In all cases arising in this state where proceedings have been or may hereafter be instituted by petition filed with the county auditor of any county, praying for the construction of any public drainage ditch, drain or watercourse, or for the repair thereof, and after the filing of such petition and before the bonds of said old county have been issued for securing funds for payment of expenses of construction of such ditch, a new county has been or may hereafter be created and organized out of any of the territory embraced within the boundaries of said county wherein said petition is or may be hereafter filed and such public ditch, drain or watercourse, and the lands affected thereby shall lie wholly within the boundaries of such new county, the county auditor of such old county shall upon demand to him made by the county auditor of such new county, transmit to the auditor of such new county all petitions, reports and files in the proceedings, and certified copies of all book entries therein, relative to any and all such ditches, drains, watercourses or for the repair thereof, the same to be filed in his office, and all book entries and proceedings relative thereto shall be transcribed by the auditor of such new county into the records of his office, and thereafter the officers of such new county shall proceed in such matter, and such drainage ditch proceeding shall be continued and completed in the same man-

6769 - 70
199-NW 883

6769-70
159-M 428

ner and with like force and effect as though such proceedings had been originally instituted in said new county. ('11 c. 278 § 1) [5608]

6773. Obligations and contracts—Moneys expended—That at the time of the transmission of such petitions and files mentioned in section one [6772] of this act, the county auditor of such old county shall certify to the auditor of such new county an itemized statement of all obligations and contracts, and all indebtedness paid, incurred or entered into by such old county relative to any such ditch, drain, watercourse or repairs thereof, verified by such county auditor of the old county, and the same shall be assumed and paid, carried out and entered into by the proper officers of the new county, the same as if originally made and entered into by such new county, and all moneys paid out or expended relative to any such ditch, drain, watercourse or the repair thereof by such old county prior to such transmission, shall with accumulated interest thereon be paid into the treasury of said old county by auditor's warrants of the new county, payable as provided by law for payment of warrants for expenses of construction of drainage ditches under drainage laws of this state. ('11 c. 278 § 2) [5609]

6774. Ditches partly in counties created after petition—Transfer of files—Proceedings—Apportionment—In all cases where proceedings have been instituted by petition for the construction of a public drainage ditch, drain, watercourse or for the repair thereof under conditions mentioned in section one of this act, except that such ditch, drain or watercourse or the lands, roads or public corporations assessed or to be assessed for the benefits arising therefrom shall lie partly within the old county and partly within the new county, but such construction or the repair thereof shall not have been completed and bonds for securing funds for payment of expense of construction have not been issued, the auditor of such old county shall immediately certify and transmit to the clerk of the district court in and for said old county all petitions and files in his office relative to such construction, together with all book entries and proceedings relative thereto, and thereupon such district court and such respective counties and the county officials of the respective old and new counties, shall have jurisdiction thereof, and shall proceed from the completed stage of proceedings, the same as if petition for such ditch were originally filed in the office of the said clerk of district court, and thereafter all further proceedings shall be had in said court as in the case of judicial ditches and with like force and effect as though originally commenced in said court, and the said clerk shall forthwith proceed to cause to be filed in the office of the county auditor of such new county, certified copies of all instruments which would have been required, had such proceedings been originally instituted in such court, and all payments made and liabilities incurred by said old county prior to the court assuming jurisdiction shall be apportioned between the old and new county as in the case of judicial ditches and paid upon the order of the said district court or judge thereof. ('11 c. 278 § 3) [5610]

6775. Outstanding bonds—Assumption of indebtedness—Agreement—If prior to the creation of any such new county, such old county shall have established or constructed any such ditch, drain or watercourse, the whole or any part of which, or any parts of the land assessed for benefits arising therefrom, lie within the territory of such new county, for the construction of which such old county has issued its bonds and interest coupons, the same being outstanding at the time of the creation of such new county, such new county shall assume and pay a share of such outstanding bonds and accumulated interest in proportion to the amounts of

benefits assessed and levied against lands and roads, public and private corporations within the territory respectively of such old and such new county, provided, however, that from the total amount of assessments of benefits levied for such construction and paid into the treasury of such old county prior to the creation of such new county, or to the apportionment herein provided for, as payment upon the bonds and interest coupons issued against such construction, shall be deducted the total amount of money paid by such old county prior to the creation of such new county or to such apportionment, upon such bonds and interest coupons and the balance of the money remaining in the treasury of the old county to the credit of such ditch, shall after such deduction, be apportioned between the old and new county in the same proportion as the total amount of assessments of benefits in each county bears to the total assessment of benefits levied for such construction as shown by the viewers' report, approved as provided by law, and the amount due said new county shall be paid by the auditor's warrant of such old county, to such new county. The amount of such indebtedness to be assumed and paid by such new county and the amount of such money in the treasury of the old county to be paid to such new county, shall be ascertained and agreed upon by the county auditors of such old and new county, and for that purpose they shall meet at the county auditor's office in the old county upon ten days' notice given by either auditor and served upon the other. A written agreement stating all the facts so ascertained shall be signed in duplicate by both auditors and filed in their respective offices, and shall be final and conclusive as to all facts therein stated. If said county auditors are unable to agree as to the facts to be so ascertained, they shall call to their assistance a disinterested county auditor of any other county in the state, and the said auditors shall proceed to ascertain said facts, and said agreement if signed by any two thereof shall have the same force and effect as if signed by the auditor of the old county and the auditor of the new county and shall be final and conclusive as to all facts so ascertained. ('11 c. 278 § 4) [5611]

6776. Duties of auditors—Payments—At least thirty days before any bond or interest coupon mentioned in section 4 [6775] of this act and which represents a debt to be partly assumed and paid by such new county, falls due, the auditor of such old county shall certify to the auditor of such new county the amount and due date thereof and the proportionate amount to be paid by such new county, and the auditor of such new county shall on or before the due date thereof draw his warrant therefor payable to the treasurer of such old county as provided by law for payment of outstanding bonds under the drainage laws of this state, for the proportionate share to be paid by such new county as herein provided, and deliver same to such treasurer of such old county to be applied to the payment of such due indebtedness. ('11 c. 278 § 5) [5612]

6777. Assessments and liens—Transcription of records—Duties of officers of new county—The auditor of such new county shall transcribe into the records of his office all records of said old county relative to the assessments levied or to be levied upon said lands, roads, or public or private corporations within the territory of such new county for ditches established by said old county prior to the organization of the new county, which ditches or the lands assessed therefor lie wholly or partly within the new county as set forth in section 4 [6775] of this act; and the register of deeds of such new county shall transcribe into his official records, all lien statements in such ditch pro-

ceedings recorded in the office of the register of deeds of such old county, and affecting lands in such new county.

Such transcribed records shall have all the force and effect of the original records, the same as if the proceedings to establish the ditch in question had been commenced in said new county; and such county auditor of such new county shall thereafter extend upon the tax books of his county and of the proper subdivisions and public corporations thereof each annual assessment levied against and a lien upon the lands within said new county, in the same manner and with the same force and effect as if such ditch proceedings had been commenced and completed in said new county, and such annual assessments shall be thereafter paid into the treasury of such new county in the same manner and at the same time as is provided by law for the payment of county ditch assessments in this state, or as provided in the order establishing such ditch. ('11 c. 278 § 6) [5613]

6778. Services and compensation of officers—In carrying out the provisions of this act, the respective county boards, in the case of a county ditch, and the district court in the case of a judicial ditch, may require the services of the county auditor, register, county attorney, clerk of court, and such other officers as shall be deemed necessary. The compensation of such county boards and such other officers for services performed in carrying out the provisions hereof shall be paid as is provided by the general laws of this state in the establishment of county and judicial ditches, and shall be in addition to any other salary or fees received by them in the performance of the regular duties of their offices. ('11 c. 278 § 7) [5614]

Compensation of county attorney (136-140, 161+382).

6779. Ditches in adjoining counties divided after petition in certain cases—Where any petition for judicial ditch has been or shall hereafter be filed with the clerk of any district court of any county of this state, praying for the construction of a public drainage ditch, partly within or affecting such county where such petition is filed, and partly within or affecting an adjoining county or counties, and where after the filing of such petition and prior to the issuance of bonds for securing funds for payment of expenses of construction of such ditch, any such adjoining county has been or may hereafter be divided and a new county created out of a part of the territory thereof, and when such drainage ditch so far as the same affects the territory comprising such adjoining county which was divided, only affects lands or municipal corporations wholly within the territory of such new county, the provisions of section 1 [6672] and section 2 [6673] hereof shall govern and be applicable. ('11 c. 278 § 8) [5615]

6780. Reassessment where assessment declared invalid—Preliminary statement—When any county board has attempted to construct, repair, enlarge or extend any county ditch which may theretofore have been begun or constructed and shall have caused, or shall hereafter cause to be constructed, repaired, enlarged or extended, any such ditch or drain, and have caused an assessment to be made therefor, which assessment shall have been heretofore or shall hereafter be set aside, or declared invalid by any court for non-compliance with any law of the state, or because such action was not justified or permitted by any law of the state, the county board aforesaid shall with all reasonable dispatch proceed to reassess the property benefited by such ditch as shown by the report of the viewers, and to that end shall prepare in tabular form a preliminary statement, giving—

First: A description of each tract of land by them deemed damaged or benefited thereby;

Second: The names of the owners of each of said tracts;

Third: The total number of acres in each of said tracts;

Fourth: The number of acres in each of said tracts by them deemed benefited or damaged thereby;

Fifth: The amount that each of said tracts in their judgment is benefited or damaged thereby;

Sixth: The entire cost of the construction, repair, enlargement or maintenance of such ditch, drain or watercourse.

In making such statement the names of the owners and the descriptions of said tracts shall be the same, as near as practicable, as the same appear in the county tax duplicates of said county. ('11 c. 113 § 1) [5616]

6781. Benefits to public or corporate roads or railroads to be assessed—In making such preliminary statement and the final statement hereinafter provided for, when any such ditch, drain or watercourse drains, either in whole or in part, any public or corporate road or railroad, or benefits any such roads so that the roadbed or traveled track of any such road was made better by the construction of such ditch, drain or watercourse, said county board shall estimate the benefits arising therefrom to such roads, roadbeds or railroads, and said statements shall show such benefits, together with the names of the roads, roadbeds and railroads benefited, and the amount of benefits to each, and all roads benefited by such ditch, drain or watercourse, and all public or corporate roads or railroads so benefited in whole or in part shall be assessed the benefits received from the construction, repair, enlargement or extension thereof, whether said ditch passes through said lands or along or near the line of such road or railroad or not, and the said county board, in estimating the benefits to lands, roads or railroads not traversed by said ditch shall not consider what benefits such roads or railroads will receive after some other ditch, drain or watercourse shall be constructed, repaired, enlarged or extended, but the only benefits they shall have received by reason of the construction, repair, enlargement or extension of said ditch, drain or watercourse as it affords an outlet to the drainage of such lands, roads or railroads. ('11 c. 113 § 2) [5617]

6782. Lands of land and railroad companies liable—All lands owned by any land company or railroad company benefited by any such ditch, drain or watercourse shall be liable to and shall pay for such benefits the same as the owners of taxable lands. ('11 c. 113 § 3) [5618]

6783. Hearing—Notice—After having completed such preliminary statement the said county board shall fix a time and place for a hearing on the same, and shall cause the county auditor to, and he shall cause notice to be given of the completion of said preliminary statement and of the time and place so fixed for the hearing thereon by having a copy of said preliminary statement, together with a notice of the time and place so set for the hearing thereon, signed by him, published for two successive weeks, at least once in each week, in a newspaper printed and published in said county, if there is one, if not, in a newspaper printed and published at the capital of the state, and by having a copy of such printed notice, at least ten days before the time set for said hearing, posted in a public place in each township where said ditch, drain or watercourse is located, and also at the front door of the courthouse in said county, and by also mailing a printed copy of said notice, at least ten days before the time set for said hearing, to all non-residents of the county interested in such work whose address is

6778
201-NW 621

6778
161-M 400

known to him, or can be ascertained by inquiring at the county treasurer's office.

If said county board are unable to proceed at the time stated in said notice, by reason of non-compliance with any of the provisions of this section, the county board shall fix a new time and place for such hearing, and proceed de novo to give the notice herein provided for and in the manner herein set forth. ('11 c. 113 § 4) [5619]

6784. County board may raise, lower or alter damages or benefits—Amended preliminary statement—Notice, etc.—The said county board at the time set for said hearing (which hearing may be adjourned from time to time until they shall complete the assessment and make the final order confirming the same as hereinafter provided) shall proceed to hear the same, at all of which hearings all parties interested in the matter shall have the right to be present and heard in person or by attorney as to any and all matters contained in or which should be contained in such statement, and said county board at said hearings shall have the power to raise, lower or alter the amount of any and all damages and benefits as fixed in said preliminary statement; they shall also have the power to amend said statement by altering or adding thereto to make the same conform to the requirements of this act, provided, however, that if they shall alter or add thereto except to raise or lower the amount of benefits or damages assessed, a new notice of hearing of such amended preliminary statement shall be given as and in the manner provided for in the preceding section. After the assessment shall have been completed in the manner herein set forth, the county board shall confirm the same by an order to be entered in their records, and the same as so confirmed shall constitute the assessment of damages and benefits in the matter, except as it may be altered on appeal as hereinafter provided. After the making of such final order the county auditor will cause notice thereof to be given by causing a copy of such completed statement to be once published in the same newspaper in which the preliminary statement was published, together with a statement that it is the completed statement as confirmed by the county board. ('11 c. 113 § 5) [5620]

6785. Appeal to district court—Procedure—Any person or corporation feeling himself aggrieved by said assessment as confirmed by the county board may appeal from the order confirming the same upon the following grounds, to-wit:

First: That the amount of damages allowed to any tract in which he is interested are inadequate;

Second: That the amount of benefits assessed against any tract of land in which he is interested is greater than the actual benefits received by it;

Third: That the said county board had no jurisdiction to make said final order confirming the assessment.

Said appeal may be taken by the appellant filing with the county auditor a notice of appeal, which shall briefly state the grounds upon which such appeal is taken, accompanied by an appeal bond with at least two freehold sureties, to be approved by the auditor, conditioned that said appellant will duly prosecute such appeal, and pay all the costs thereof, provided that such notice of appeal and bond shall be filed with the county auditor within fifteen days after the publication of said notice of the completion of said assessment. In the event of any appeal being taken the county auditor shall, within twenty days after the notice of appeal and appeal bond is filed, make a complete transcript of the proceedings had before the county board under this act, and certify the same, together with all the papers filed in his office in the reas-

essment proceedings pertaining to such ditch, drain or watercourse, including the notice of appeal and appeal bond, to the clerk of the district court, upon being paid by the appellant the sum of two dollars therefor. If the appellant shall not pay said sum therefor before the expiration of said twenty-days, said appeal shall be deemed abandoned. ('11 c. 113 § 6) [5621]

6786. Consolidation of cases, etc.—If more than one party appeal the judge of the district court may, in his discretion, order the cases to be consolidated and tried together, and in such case the rights of each party shall be separately determined by the jury in its verdict, and in all cases of appeal the amount awarded by the jury shall stand for and in the place of the amount from which the appeal was taken. No assessment, however, shall be set aside unless the party appealing shows that he has been injured thereby. ('11 c. 113 § 7) [5622]

6787. Tabular statement—Duty of auditor—Lien—Within twenty days after the confirmation of such assessment by the county board, if no appeal is taken, within twenty days from the final determination taken, or if an appeal is taken within thirty days from the final determination of all appeals taken, the county auditor shall make in tabular form a statement showing the following facts in the order named, to-wit:

First: A description of each tract of land benefited by the construction, repair, enlargement or extension of such work;

Second: The names of the respective owners, as shown by the tax lists of the county, of said premises;

Third: The amount of said benefits assessed against said premises respectively.

Which statement he shall sign and acknowledge before some officer authorized to take acknowledgments, and cause to be recorded in the office of the register of deeds of the county, and posted upon the abstract books in his office, if he has any such books, and the amount for which each tract of land, as shown by such statement, is assessed, shall be and remain a lien upon such lands, public or corporate roads or railroads from the time of filing the same in the office of the register of deeds until fully paid, said payment to be made as hereinafter provided; and the filing of such statement in the said register of deeds' office shall constitute notice to all the world of the existence of such lien. Said statement, after the same has been recorded, shall be returned by the register of deeds to the county auditor to be by him carefully preserved and filed with the other papers relating to said ditch, drain or watercourse. ('11 c. 113 § 8) [5623]

6788. Interest, etc.—The amount that each tract of land, public or corporate road or railroad shall pay for the location, construction and establishment of such ditch, drain or watercourse shall bear interest from the date of the filing of the auditor's statement in the register of deeds' office, at the rate of six per cent per annum until fully paid, and said interest shall constitute an additional lien upon said lands, public or corporate road or railroad, upon which the assessments bearing the interest shall be a lien, which said interest when paid shall be computed by the county treasurer. ('11 c. 113 § 9) [5624]

6789. Liens—When payable—The amount of such liens shall be payable to the county treasurer of said county, and they shall become due and be payable at the time and in the manner following, to-wit:

One-tenth of said principal with the interest thereon on or before one year from the filing of said statement in the register of deeds' office.

One-tenth of same on or before two years from said time.

One-tenth of same on or before three years from said time.

One-tenth of same on or before four years from said time.

One-tenth of same on or before five years from said time.

One-tenth of same on or before six years from said time.

One-tenth of same on or before seven years from said time.

One-tenth of same on or before eight years from said time.

One-tenth of same on or before nine years from said time.

One-tenth of same on or before ten years from said time.

Provided, that if the first payment is not made before the first day of December next succeeding the date of filing the aforesaid statement in the office of the register of deeds, and the next succeeding payment before the first day of the next succeeding first day of December, and so on until all of said payments shall have been made, then and in that case the auditor shall enter the delinquent payment for said year against the said tract of land against which the same shall have constituted a part of the assessment assessed against the same on the tax lists of the county, as a tax on said tract to become due and payable with the accumulated interest thereon, and a penalty of ten per cent of such payment, which shall be collected as the other taxes are collected for said year on said lands. Provided further, that the court or county board, as the case may be, may in their discretion, and for good cause shown, make said liens payable in twenty equal installments, the last installment to fall due in thirty years and the first in ten years after the date thereof, and to provide that interest alone shall be paid during the first ten years. Provided further, however, that the full amount of any assessment with accumulated interest thereon, may be paid at any time after the filing of said list in said register of deeds' office. When full payment shall have been made on any tract of land, the auditor shall certify to the fact, and the record of such certificate shall release and discharge said lien of record. ('11 c. 113 § 10, amended '21 c. 508 § 2) [5625]

236 Fed. 185.

6790. Payment by public or corporate roads or railroads—All public or corporate roads or railroads shall pay the amounts taxed up against them as follows:

When any public highway is benefited by such ditch, or drain, the town, which is by law charged with the duty of keeping such highway in repair, shall be assessed for the amounts of benefits accruing to such highway in said town by reason of said ditch or drain, and the same shall be paid out of the treasury of such town upon demand of the county auditor; and whenever any railroad or the lands of any railroad company is benefited by such ditch, drain or watercourse, such railroad or railroad company shall be assessed the benefits received by such land by reason of the construction of such ditch, drain or watercourse, the same as other lands benefited are assessed, which assessments shall be collected from such railroad corporation or company in the same manner as personal taxes are collected by law, or said liens against any such company may be foreclosed by suit in the same manner as provided by law for the foreclosure of mortgage liens upon real estate by action. ('11 c. 113 § 11) [5626]

6791. Payment of damages—When any one shall be entitled to damages by reason of the construction of such ditch, drain or watercourse, and has not already

been paid the amount of such damages, a warrant shall be drawn therefor signed by the chairman of the county board and attested by the county auditor in favor of the party entitled to receive said damages, which warrant shall become due and payable with interest thereon from the time of the letting of the contract for the construction of such ditch, drain or watercourse, upon the filing of said statement in said register of deeds' office. The county shall be bound for their payment. If there is then sufficient money in the county treasury belonging to said ditch, drain or watercourse fund to pay said warrants, they shall be paid out of the same; if not, such funds shall be used as far as they will go, and the balance paid out of the general county fund. The amount so taken from the general county fund shall be replaced from the moneys collected on account of the benefits assessed as soon as collected, so far as they shall be sufficient for, and are available for this purpose. ('11 c. 113 § 12) [5627]

236 Fed. 185.

6792. Warrants to be full compensation—The conforming with the provisions of this act and the issuance of said warrants for damages shall be held and construed to be a just and full compensation to all persons interested in the lands damaged by the construction, repair, enlargement or extension of said ditch, drain or watercourse, and the condemnation of all lands and rights taken for such construction and the maintenance of such ditch, drain or watercourse. ('11 c. 113 § 13) [5628]

6793. Compensation of county board—Expenses—Benefits—The county board in addition to the compensation allowed them under the general law, shall receive as special compensation for their labors performed under this act the same per diem and mileage allowed under the general law for the actual time devoted by them in carrying out the provisions of this act, and the auditor shall receive such compensation for his services under this act as shall be allowed him by the county board. All the expenses of the proceedings under this act, and the entire cost of the construction, repair, enlargement or extension of such ditch, drain or watercourse over and above the total amount of benefits assessed shall also be paid by the county out of its general fund. The amount of benefits assessed against the property benefited shall not exceed the total amount of the contracts awarded for the construction, repair, enlargement or extension of said ditch, drain or watercourse, anything in this act to the contrary notwithstanding. ('11 c. 113 § 14) [5629]

6794. Records as evidence—The record thereof and a certified copy of the record of any order of the county board made under this act shall be prima facie evidence of the facts therein stated, and of the regularity of all the proceedings prior to the making of such order. ('11 c. 113 § 15) [5630]

6795. Amounts previously paid to be credited, etc.—Appeal—All persons who shall pay any assessments made for the same purposes for which the second assessment is made because of the invalidity of such first assessment, shall be credited with the amount paid by them on such assessment, and if such payments have exceeded the amount of the second assessment, as made under the provisions of this act, the amount overpaid shall be repaid to the person or persons who have made such payments, upon the allowance of a claim therefor by the county board and by means of a warrant of the county auditor upon the general ditch fund of the county, if any, and if none, from the general revenue fund of the county. An appeal will lie from the allowance of a claim of this kind the same

as from the allowing of ordinary claims against the county. ('11 c. 113 § 16) [5631]

6796. Pending actions—This act shall not affect any action now pending in any of the courts of this state. ('11 c. 113 § 17) [5632]

6797. Taxation—Reduction in acreage by ditch, etc., to be considered—In all cases where a drainage ditch has been or shall be constructed under county or judicial ditch proceedings, it shall be the duty of the persons and boards having to do with the making of the assessment, when determining the valuation of such land for taxation purposes, to take into consideration a reduction in the acreage of each tract or lot sufficient to cover the amount of land actually used for the ditch and its waste bank. ('13 c. 208 § 1) [5633]

6798. Declaration and definitions—Drainage and flood control are clearly within the functions of governmental action, and the exercise of the right or authority to authorize or direct drainage carries with it the right to care for and control the waters thus gathered and turned into natural or artificial channels. This act may be known and cited as the "Drainage and Conservancy Act of Minnesota" and any districts organized hereunder shall be known as "Drainage and Conservancy Districts" and such additional name as the order of the court may designate.

Whenever the term "publication" is used in this act and no manner specified therefor, it shall be taken to mean publication for once a week for three (3) consecutive weeks in one legal newspaper published and of general circulation in each county affected.

Whenever the term "public health" is used in this act, it shall be construed to include any act or thing tending to improve the general sanitary condition of the community whether by way of drainage, relieving low or wet land of stagnant and unhealthy conditions, or by preventing the flooding of any lands thereby producing or tending to produce unhealthful conditions.

Whenever the terms "public welfare," "general welfare" or "public benefit" are used, it shall be construed to extend to and include any act or thing tending to improve or benefit or contribute to the safety of the general public or benefit the inhabitants of the district and shall be construed to include any improvement contemplated by this act which shall prevent fire in areas subject to destruction by fire.

Whenever the term "person" is used in this act and not otherwise specified, it shall be taken to mean and include person, firm, copartnership, association or corporation, other than public or political subdivision, and whenever the term "corporation" is used, it shall be construed to include both "municipal corporations" and "private corporations" unless otherwise specifically designated, and whenever the term "public corporation" or "municipal corporation" is used or intended, it shall be construed to mean cities, villages, counties, townships or other political subdivisions or any public commission of the state.

Whenever the term "court" is used, it shall be taken to mean the district court or the judge thereof, and to apply to the district court wherein the petition for the organization of the district was filed and granted, unless otherwise specified. Provided nothing herein contained shall be construed to abrogate the title of the state in the public waters, but the use and control of certain waters within the limitations and for the purpose herein specified may be granted to the district. (Ex. Sess. '19 c. 13 § 1, amended '21 c. 325 § 1; '23 c. 308 § 1)

6799. Powers granted to courts—The district court of any county in this state, or any judge thereof in vacation, is hereby vested with jurisdiction, power, and authority upon the filing of a petition as specified in

Section 3 of this act, and the conditions stated therein are found to exist to establish a drainage and conservancy district and define and fix boundaries thereof, which may be entirely within or partly within and partly without any county and may include the whole or any part of one or more counties, including the county in which the petition is filed, for all or any of the following purposes:

- (a) For regulating streams, channels or water courses, and the flow of water therein, by changing, widening, deepening, straightening the same or otherwise improving the use and capacity thereof.
- (b) For reclaiming by drainage, or filling, dyking or otherwise protecting lands subject to overflow.
- (c) For providing for irrigation where it may be needed.
- (d) For the prevention of fires in areas of agricultural lands or in peat areas subject to destruction and damage by fire and for the irrigation of agricultural lands needing the same by regulating, controlling, conserving, and applying the waters in any ditch or drain which has heretofore been or shall hereafter be established and constructed under any law of this state and in streams or water courses connecting therewith.
- (e) For regulation and control of flood waters and the prevention of floods, by deepening, widening, straightening or dyking the channels of any stream or water course, and by the construction of reservoirs or other means to hold and control such waters.
- (f) For diverting in whole or in part streams or water courses and regulating the use thereof; streams so diverted shall follow the natural course of drainage and terminate in the same natural outlet; and as incident to and for the purpose of accomplishing and effectuating all the purpose of this act, may under the conditions specified herein, straighten, widen, deepen, or change the course or terminus of any natural or artificial water course and build, construct and maintain all necessary dykes, ditches, canals, levees, wall embankments, bridges, dams, sluice ways, locks and other structures that may be found necessary and advisable to create, establish and maintain the necessary reservoirs or other structures, to hold, control and regulate any and all waters within said district, and to acquire title in the name of said district to all necessary lands and other property, to construct and maintain reservoirs, dykes or other structures, including dams for power purposes and conserve and utilize such waters for any purpose consistent with the purpose of this act. Provided, however that the provisions of this act shall not be construed to authorize the diverting of the waters of one general water shed to another general water shed, and no river nor any tributary of any river or stream in this State shall be diverted from its natural outlet by any diversion channel or flood control work, or by any other work authorized by, or mentioned in this act at any point in its course distant more than two miles from such natural outlet. (Ex. Sess. '19 c. 13 § 2, amended '21 c. 325 § 2; '23 c. 308 § 2)

6800. Petition for organization of districts—Before any district court shall establish any district as outlined in Section 2 of this act, a petition shall be filed

in the office of the clerk of said court, in any county containing territory included in said petition, signed by not less than twenty-five (25%) per cent of the resident free-holders of said district, but not in any event shall more than fifty (50) signers be required, or by the proper officials of any county, city or village authorized by resolution duly passed by the governing board of said county, city or village. Said petition may be signed by one or more such counties, cities or villages, and if signed by two or more counties, or by five (5) or more cities or villages then the same need not be signed by any of the freeholders of said proposed district.

Said petition shall set forth:

1. The proposed name of said district.
2. The necessity for the proposed work, in respect to one or more of the objects or purposes mentioned in the subdivisions of Section 2 and that it will be conducive to the public health, safety and convenience and promote the welfare of the inhabitants of said district, and be of public benefit.

3. A description of the nature, purpose and plan of the contemplated improvement and shall include in general terms a description of the territory proposed to be included in said district. Said description need not be given by metes and bounds or by legal subdivision, but shall be definite and accurate description so that the territory to be included may be understood therefrom. Unless good reason be shown to the contrary the same shall include all territory within a given water shed or drainage basin or all territory from which the water from natural or artificial channels find their course through one general stream or channels, provided, that in all cases where any river basin or water shed in this state contains more than ten thousand (10,000) square miles of territory, no district shall be organized under this act which shall include in one district the main stream of such basin or water shed, and any of its tributaries, but the valley of the main stream, and the valley of each of such tributaries thereto, may be organized separately; and in organizing the main stream of any such river basin or water shed into such separate district, there may be included therein the lands along said main stream, that are likely to be affected, benefited or damaged by any proposed improvement in the valley of such main stream, together with such territory immediately adjoining thereto as will permit the boundary line of said district to be given by the lines of Government survey, but no part of any tributary of such main stream or river shall be included in said district except so much thereof as lies in the immediate valley of said main channel and such part thereof as is likely to be affected by, or form a part of any improvement constructed in, or connected with, the main stream of such basin for the proposed control of the flood waters in said main stream.

4. Said petition shall pray for the organization of the district, the appointment of a governing board therefor and that the boundaries thereof may be specifically fixed and defined by order of said court.

No petition containing a requisite number of signatures or petitioners or signed by the requisite number of counties, villages or cities shall be void or dismissed on account of any defects therein, but the court shall at any time permit the petition to be amended in form and substance to conform to the facts by correcting any errors in the description of the territory or by supplying any of the defects therein. Several similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and all together be regarded as one petition and any withdrawal of any signatures or petitioners from

such petition after the same has been filed, shall in no manner affect the jurisdiction of the court, and all petitions filed prior to the hearing hereinafter provided shall be considered by the court as a part of the original petition. (Ex. Sess. '19 c. 13 § 3, amended '21 c. 325 § 3; '23 c. 308 § 3)

6801. Surety bond for expenses—At the time of filing the petition provided for in Section 3 of this act, or before the notice of hearing thereon is given, a bond shall be filed by said petitioners with the clerk, to be approved by said court and in such sum as it shall designate, sufficient to pay all expenses connected with said proceeding, in case the court refuses to organize said district, and, if at any time during the proceeding the court shall be satisfied that an additional bond is needed, it may so order, provided, that if the petition is signed by the proper officials of one or more counties, accompanied by a copy of a resolution passed by the board of county commissioners thereof, that said county or counties will be responsible for such costs, then, and in that event, no bond shall be necessary. (Ex. Sess. '19 c. 13 § 4, amended '23 c. 308 § 4)

6802. Notices and hearing by Court—Upon the filing of said petition with the clerk of the district court, as provided in Section 3 of this act, he shall immediately notify the judge of said court of the filing thereof, who shall within ten days thereafter, by order, fix a time and place for hearing on said petition at some point within the limits of said proposed district, notice of which hearing shall be given by a publication in at least one legal newspaper in each county affected by said petition for three successive weeks, the last of which publication shall be at least ten days prior to the date set for hearing; provided that if the territory described in said petition shall be situate in more than one county comprising two or more judicial districts, then the judge of said court, where said petition is filed, shall arrange with the judge or judges of such other districts for a joint hearing upon such petition, which hearing may be at such time and place, within the territory described in said petition, as said judges shall jointly specify, and at said hearing each judicial district shall be represented by one judge only, but the district court, in which said petition was originally filed, shall for all other purposes, except for the purpose of said joint hearing, and except as hereinafter otherwise provided, have and retain original jurisdiction. (Ex. Sess. '19 c. 13 § 5, amended '23 c. 308 § 5)

6803. Court to file findings—Designation by name—District office—At the time and place set for hearing on said petition, all parties interested may appear and be heard for or against the granting of said petition, but continuance of such hearing shall be granted by the court when necessity therefor is shown: Upon said hearing if the facts required by this act to be set forth in the petition are proven by competent evidence and found by the court to exist, and that the purpose of this act would be subserved by the creation of a drainage and conservancy district, comprising the whole or certain portions of the territory outlined in the petition, then said court shall make and file its findings of all matters involved in said petition, and shall, by order designate the boundaries of said district and in case the main stream of a river basin containing more than ten thousand (10,000) square miles is organized into a drainage and conservancy district such boundaries shall conform as near as practicable, using government lines, to the property and corporations affected or benefited and direct and declare said district organized, designating in said order the name by which it shall thereafter be known, and upon the filing of said order with the clerk of court where said petition was filed and a certified copy thereof in the

office of the secretary of state, said district shall become and be for all purposes of this act, a body corporate endowed with all the rights, privileges and authorities herein designated, with power to sue and be sued, to incur debts and obligations for the purposes specified in this act and to do and perform and exercise all the rights and privileges in this act enumerated; provided, that the inclusion of any land, property or corporation within the limits of such district shall not be construed to render such property or corporations liable to assessment under any provisions of this act, unless the same falls within the class of property or corporations actually benefited as specified in Section 10 of this act.

Said order or decree shall designate the place where the office or proper place of business of the district shall be located, which, unless special reasons arise to the contrary, shall be where the petition is filed; shall designate the number of commissioners or officers who shall constitute the first board of directors, which shall be not less than three (3) nor more than five (5), and shall name and appoint such officers who shall be residents of said districts.

If upon said hearing the court finds that any portion of the territory named in said petition should not be included in said district the same shall be excluded from the district, but any territory benefited by the proposed improvement not included in said petition may at said hearing, or at any subsequent hearing ordered by the court upon petition from resident freeholders of said territory, or from said board upon due notice, be added to said district and the boundaries thereof fixed accordingly. If, upon full hearing, the court shall determine that the territory described in said petition or some part thereof should not be organized in said district, then said petition shall be dismissed and the costs incurred be taxed against the petitioners. (Ex. Sess. '19 c. 13 § 6, amended '21 c. 325 § 4; '23 c. 308 § 6)

6804. Authority of the board—Within ten days after the filing of the order organizing said district, in the office of the secretary of state, the parties named therein as the first board of directors shall meet at the office of the clerk of the court, where said petition was filed, each take and severally subscribe the oath provided by statute to be taken by public officials, and shall severally file with the clerk of said court a bond in the sum of one thousand (\$1,000) dollars, furnished by a proper surety company, the cost to be paid by the district, conditioned for the faithful performance of their duties, and shall thereupon organize, by electing one of their number as president, and one of their number or a third party as secretary or clerk of said board, and shall provide the necessary books and records, and if the place designated in said order, as general offices for said district shall be a county seat, said board shall have the authority to elect the clerk of the district court of such county as clerk of said board, and thereupon and thereafter all papers filed with said clerk shall be and constitute a filing with said board, and it shall be the duty of said clerk to keep and preserve the record of said board in his office and to do and perform such duties as shall be designated and required by said board, who shall have authority to fix his compensation.

Said board shall meet at least semi-annually and at such other times as they may designate or as occasion may require, and at all such meetings a majority of the members thereof shall constitute a quorum and a legal meeting thereof may at any time be called upon eight (8) days' notice by mail, given by the clerk or any member of the board, and the compensation of the members shall be such as the board shall fix and

not to exceed seven dollars (\$7.00) per day and expenses. (Ex. Sess. '19 c. 13 § 7)

6805. Treasurer and chief engineer—Said board shall have full authority to elect or appoint a treasurer, who shall be a resident of said district and may be one of their members, who, before entering upon his duties as such, shall subscribe the oath required by statute in the case of public officials, and shall be required to give bonds in such sum as the board shall direct, which shall not be less than the total sum that shall at any time be likely to be in his hands or under his control belonging to said district, which bond shall be by a surety company, to be approved by said board, and the duties of said treasurer shall be such as the board may from time to time designate, and, among other things, it shall be his duty to receive all moneys belonging to said district and deposit the same in such bank or banks as the board shall designate, and it shall be the duty of said treasurer to require such banks to give a proper bond for the care and accounting for such moneys, and said treasurer shall pay out said money only on proper orders signed by the president and secretary of said board. Said board may also employ a chief engineer and an attorney and such other engineers and attorneys or agents or assistants as may from time to time be needful and necessary and provide for their compensation, all of which expenses shall be taken and treated as a part of the costs of each particular improvement but the charges of the engineer that can be included as a part of the cost of any improvement together with his duties, shall as far as applicable, be governed by the provisions of section 5571 of the General Statutes of 1913 and amendments thereto, and neither the engineer or attorney shall receive any compensation except when employed in the construction of some specific improvement to which that expense can be charged. The chief engineer shall be superintendent of all the works and improvements and shall have general charge of all work pertaining to drainage and flood control done under proceedings had under this act, within the limits of said district and before any court or board of county commissioners shall order or authorize the construction of any drainage ditch within said district, notice shall be given to said engineer and he given an opportunity to be heard with reference to any objection thereto. (Ex. Sess. '19 c. 13 § 8)

6806. Terms of office of directors—The members of the board of directors of said district shall hold their office, where their number does not exceed three (3), one for a period of two (2) years; two for four (4) years, and where their number shall consist of five (5) members, two of said board shall hold their office for the period of two (2) years; three for the period of four (4) years, and thereafter all shall hold their office for four years, and the district court of the county wherein said general office is located, shall have authority to fill all vacancies that occur in said board from any cause, and each member of said board shall hold his office until his successor is elected and qualified. And said board when organized shall for all purposes of this act be and constitute a commission for the purpose of carrying into effect any and all orders, judgments, decrees or directions made by the district court relative to any improvement authorized by this act, within the limits of said district. (Ex. Sess. '19 c. 13 § 9)

6807. Establishment of district—Classes—After the organization of the board of directors of any drainage and conservancy district organized under the provisions of this act and upon filing with the clerk of the board a petition signed by not less than twenty-five (25) freeholders of the district, but in no event shall

more than twenty-five (25%) per cent of the owners of the property affected be required, or by the board of county commissioners of any county, or council of any city or village likely to be affected by the proposed improvement therein, asking for the construction within the limits of said conservancy district of any of the improvements authorized by the provisions of this act relative to drainage, regulation or control or conservation of the waters of any lake, pond, marsh, or body of water, river, stream, watercourse, ditch or drain within said district which may cover the whole or any part of the improvement contemplated when said district was organized therein describing the need of the proposed improvement, the extent thereof, and describing in general terms the bodies of water, streams or water courses proposed to be improved, or reservoirs or other improvements constructed, and if the construction of a ditch or drain as a part of the proposed improvement contemplated, a description of the starting point, the general course and termination thereof shall be given therein, or if the contemplated improvements require that any ditch or drain heretofore or hereafter established and constructed under any law of this state, or any portion thereof, be utilized for the protection of fires in areas subject to destruction or damage by fire or for irrigation, all as hereinbefore specified, a description of such ditch and drain, or the portions thereof so required, and a general description of such areas, protection whereof from fire is sought, or irrigation is sought, setting forth the reasons and necessity for such improvements and that the same if constructed will benefit public health and general welfare of the inhabitants in that vicinity and said petition is to be accompanied by a bond signed by said petitioners, or any number of them or other parties in their behalf in such sum as the board of directors of such district may specify and such as they shall approve, conditioned for payment of all costs or expenses in connection with such improvements in the event said petition as therein set forth or subsequently modified is not granted; it shall be the duty of said board of directors of said district to cause to be made at the earliest possible date by its engineer all necessary surveys, maps, plats, profiles and plans covering said proposed improvements so as to fully inform said board as to the merits and practicability of proposed improvements, and in making said surveys, plats, profiles and report, said engineer shall, so far as practicable, conform to the requirements of Section 5526, General Statutes of 1913 and amendments thereto [6678], and said Board shall have authority to correct, change or modify the proposed improvements as outlined in said petition, and if the report of said engineer is favorable to the construction of said improvements, and is approved by the board of directors, said board shall, with the least possible delay, appoint three (3) disinterested citizens of said state to act as viewers, and the viewers so selected shall, after subscribing an oath to faithfully and impartially perform their duties, proceed and personally inspect and examine all lands, highways and other property likely to be affected by such improvements, or that may be used or taken for the construction or maintenance thereof, and shall in the performance of their duties, so far as practicable, comply with the provisions of Section 5528 of the General Statutes of 1913 and amendments thereto [6681], and make and file with the clerk of said board with such plans and specifications a detailed statement showing the actual benefits and damages that will result to individuals, property or corporations from the construction of said improvements, and a list of lands and other property

including highways and corporations that will be actually benefited or damaged, and the amount thereof, and shall include lands, roads, corporations and other property receiving actual benefits by way of drainage or control of flood waters, or by regulation, conservation and application of waters for fire protection and irrigation as hereinbefore authorized and lands or water powers further down the valley and shall include all lands to which a drainage outlet is supplied by such improvement by way of increased facilities for drainage or control of flood waters or protection from fire or for irrigation and all such property and corporations shall be assessable for the cost of the proposed improvement in proportion to the actual benefits received as finally determined by the court, provided, the board of directors of the district may elect to levy no assessment under this section upon waterpowers, but collect for such improvement as otherwise provided in this act. Sections 5528 and 5529 of the General Statutes of 1913, together with amendments thereto [6681, 6682], so far as applicable, shall apply to and govern the work of the viewers under this act; and provided further that in any case where fire protection is part of the relief prayed for in said petition and the utilization of any existing ditch or drain, or any portion thereof, is alleged to be necessary thereto, said petition for such improvements, before being presented to said board of directors, shall be signed by not less than fifty per cent of the resident freeholders, but in no event shall more than twenty-five signers be required, whose lands are affected by the ditch or drain or portion thereof to be utilized, and approved by resolution of the board of county commissioners of each county wherein the same is located. (Ex. Sess. '19 c. 13 § 10, amended '21 c. 325 § 5; '23 c. 308 § 7)

6808. Report of board and action by courts—Before proceeding with the construction of any improvement, said board shall file in the office of the clerk of the district court of the county in which such improvement or some part thereof is to be located, the original petition filed with them, together with the report of the engineer and all plats connected therewith and the report of the viewers on benefits and damages and a list of lands assessable, with a petition or report on behalf of said board, therein setting forth the nature and extent of said improvement in general terms, the necessity therefor, an estimate of the costs thereof, and that the same will be of public utility and will result in the improvement of the public health and general welfare—reference may be made to the reports of engineer and viewers for greater particularity, and asking that a time and place be fixed for a hearing upon said petition and said reports, and that at said hearing an order be made establishing the drain or improvement and authorizing the construction thereof, and confirming the reports of the engineer and viewers and fixing the rights of the parties, and upon the filing of said petition and said report, the clerk of said court shall immediately notify the judge thereof, who shall within ten days thereafter, by order, fix a time and place within such district for a hearing upon said petition and reports of which due notice shall be given by the clerk of said court, by publication in at least one legal newspaper in each county affected by said improvement, therein, in general terms, describing the lands, public roads and corporations including any ditch or drain established and constructed under any law of this state, or any portions thereof, in such county affected by said improvement and the lands, and property if any, reported by said viewers as assessable for the construction and maintenance thereof,

and giving notice of the pendency of such proceedings and the nature of the proposed improvement, and that plans and specifications thereof, including the engineer's and viewers' reports are on file in his office subject to inspection and requiring all parties interested, as shown in said petition and reports, to appear before the court at the time and place designated in said notice, and present their objections, if any they have, and show cause why an order should not be made by said court granting such petition and confirming the reports of said engineer and viewers, and ordering the establishment and construction of said improvement. If any said improvement required that any ditch or drain heretofore or hereafter established and constructed under any law of this state, or any portions thereof, be utilized for any purposes authorized under this act, a printed copy of said notice shall be served by the clerk of said court upon each public corporation in this state charged by law with the maintenance and repair of such ditch or drain, at least ten (10) days before the day set for said hearing in the manner provided by law for the service of a summons in a civil action. (Ex. Sess. '19 c. 13 § 11, amended '23 c. 308 § 8)

6809. Modifications, approval or rejection—At the time and place specified in said notice the court shall hear all parties interested for and against the granting of such petition and confirming the reports, and may order and direct the modification of said plans and specifications and the assessments of benefits and damages and amend or change the list of property reported as assessable for the construction and maintenance thereof, or may recommit the same to the engineer or viewers or both for changes, and if, upon full hearing, the court shall find that said improvement will be conducive to the public health and promote the general welfare and cause the protection and reclamation of wet or overflowed lands or the control of flood waters in streams, channels and reservoirs, or aid in the prevention of fires in said areas or any purpose authorized of this act, in said drainage and conservancy district and that the benefits resulting therefrom will be greater than the costs of said construction and damages, and a sum equal to fifteen (15%) per cent of the cost of said construction, exclusive of damages, for maintenance, then said court shall make its findings accordingly and order and direct the construction of said improvement and confirm the report of the engineer and the findings and report of said board of viewers with reference to benefits and damages and lands assessable and may, by said order, authorize the board of said district to construct the whole or any part of the improvement petitioned for, or to let contracts for the improvement ordered as a whole or for different parts thereof separately, provided, all persons, parties or corporations affected by said order shall have the right to appeal on questions of benefits and damages in the manner now provided for appeals in the case of judicial ditches, pursuant to provisions of Section 5534, General Statutes of 1913, and acts amendatory thereof.

If any said ditch or drain, or any portion thereof mentioned in said petition and reports, are proper to be utilized for any of the aforesaid objects or purposes of this act, the court shall include in its findings all matters in respect thereto, and in and by said order shall fix and limit the use and application of the same therefor, taking care not to destroy said ditch or any part thereof so used for the purposes for which it was established, and upon the entry of said order the board of directors of such district shall have and exercise all the authority thereover theretofore vested in any pub-

lic corporation or administrative body as to such ditch or drain or portion thereof, and shall be charged with all the duties of any such public corporation or administrative body as to the upkeep, repair and maintenance of any such ditch or the part thereof taken hereunder. (Ex. Sess. '19 c. 13 § 12, amended '21 c. 325 § 6; '23 c. 308 § 9)

6810. Awarding of contracts—The board of directors of any drainage and conservancy district organized under the provisions of this act, shall have full authority to let contracts for the construction of and cause to be constructed any and all works of improvement in accordance with the order of the court and the plans and specifications referred to in said order pursuant to the provisions of section 16 of this act and under the conditions named in said section, may employ and use men and equipment under supervision of the chief engineer or other agents for the construction, repair or improvement of any portion of said work not let by contract. (Ex. Sess. '19 c. 13 § 13)

6811. Right of entry—The board of directors of any district organized under this act and their agents and employees; including contractors, may enter upon lands within or without the district in order to make surveys and examinations to accomplish all necessary preliminary purposes, the district being liable only for an actual damage done, and any person or corporation preventing such entrance shall be guilty of a misdemeanor. (Ex. Sess. '19 c. 13 § 14)

6812. Orders and decrees for various improvements—In order to effect the drainage reclamation, irrigation or protection of land or other property within the limits of any drainage and conservancy district, and to effectuate all the purposes of this act, the district court of the several districts in this state and the judges thereof in vacation where any portion of such judicial district extends, within the limits of any drainage and conservancy district organized under the provisions of this act, are hereby fully empowered to make all necessary orders and decrees and direct the entry of all necessary judgments upon the filing of a petition as provided in Section 11 of this act by the board of directors of any such district, and finding that grounds exist for the granting of such petition to order established and constructed any of the improvements specified in this act and authorize the board of directors of such district to cause to be constructed any such improvement and to clean out, straighten, widen, alter or deepen or change the course or terminus of any drain, ditch, river, creek or natural stream and to fix the height of water in any lake, pond or reservoir and cause the same to be raised or lowered and fill up or abandon or alter any ditch, drain, river or water course, pond, lake, or any natural or artificial basin or stream, and to divide the flow of water in or out of any such lake, pond, reservoir or water course and to cause to be constructed and maintain any lateral ditches, sewers, canals, dykes, dams, sluiceways, reservoirs or flood basins and construct and maintain pumping stations and other similar works and any works of improvement that may be deemed necessary for the prevention of fires in areas subject to damage or destruction thereby or to secure the drainage of lands within the limits of said district, and the control of waters therein, either in the channels of any stream or waterway, or ditch or drain, or in any lake, pond, reservoir, or other structure for holding and controlling water, including the power to exercise the right of eminent domain for the purpose of enlarging any lake, pond, or other body of water for reservoir purposes, or the flooding of land for the creation and establishment of reservoirs and the board of directors of any

district organized under this act, upon being authorized by order or decree of the district court, shall have full authority to do and perform all things necessary to effectuate the purposes of this act and cause to be constructed and maintain any and all canals, levees, dykes, dams or sluiceways including reservoirs, holding basins, flood-ways and pumping stations and any other work of improvement that may be deemed necessary and proper to be constructed for the purpose of securing drainage of wet and overflow lands and protection of lands and property within the limits of said district from flood and inundation and from fire and as such board under the provisions of this act may exercise the right of eminent domain in behalf of such district in acquiring the necessary land for the creation of reservoirs or other improvements along or in the vicinity of the channels or waterways within the limits of said district, which authority may be exercised under the provisions of this act or under the provisions of Chapter 41 of the General Statutes of 1913, and acts amendatory thereof, and said board shall have full control thereof and shall have full authority to hold, operate, lease or control any water power created by any improvement authorized by this act and to enter into all contracts for the furnishing of water for irrigation, or for any other purposes, or for the leasing or furnishing of power, when authorized by order of the court, as hereinafter provided, and all sums realized from any such purpose shall be paid into the treasury of said district and be and become the property of said district, and may be used by said board to defray its general expenses and for the upkeep of any improvement made within said district and the improvement of the channel of any stream or waterway therein. (Ex. Sess. '19 c. 13 § 15, amended '23 c. 308 § 10)

6813. **Bids authorized**—After the order has been made by the district court directing the establishment of each improvement, as provided in section 12 of this act, it shall be the duty of the board of said district to call for bids for the construction of said work and give notice thereof specifying therein the time and place when bids will be open for the letting of a contract for the construction of said work; and said contract may be let in sections or as a whole as said board may direct, notice of which shall be published once each week for three (3) successive weeks in at least one newspaper published in any county where said improvement is to be made and in at least one of the papers in said state where notice of such contracts are usually published and at the time and place specified in said notice; said board may let said contract to the lowest responsible bidder, who shall give a bond with ample security, conditioned for the carrying out of said contract. Said contract shall be in writing and shall refer to the plans and specifications as approved by the court and prepared by the engineer, and shall be in such form as the attorney for said board shall direct and such as shall be approved by said engineer and said board, provided, that in all cases where a sudden emergency may arise rendering it necessary in order to protect the interests of the districts, work may be done under the direction of the board and engineer without contract to the extent that may be necessary to protect the interest of the district. (Ex. Sess. '19 c. 13 § 16)

6814. **Creation of reservoirs**—In all cases where a reservoir is created either in a natural basin or otherwise and said board shall conclude that the creation of said reservoir will create a waterpower or establish conditions whereby waterpower can profitably be constructed in connection with said reservoir said board may petition the court a time and place within said

county for a hearing on said petition, notice of which hearing shall be given by publication of said order in a weekly newspaper for two successive weeks in each county in which said reservoir and waterpower or some part thereof is situated. If upon said hearing, said court shall find that it is practical to utilize the waters of said reservoir for waterpower purposes and that the same will be of benefit to the public and to said district, he shall have authority to authorize said board to issue the bonds of said district in such sum as such improvement may require, not to exceed 90% of the reasonable value of the proposed water power; and upon the making of said order, the board of directors are hereby authorized to issue bonds of said district not to exceed such sum as specified in the order of the court in such denominations and in such form as the board may determine, payable in not less than 10 or not more than 20 years from date with interest not to exceed 6% per annum payable annually, which bonds shall be signed by the clerk and president of said board and registered in the same manner as county bonds under the laws of this state, and the same shall be and constitute a first lien upon said water power and upon all of the property connected therewith and the income therefrom, and upon the issuance of said bonds, it shall be the duty of said board to create an interest fund and provide for the accumulation of the necessary sum to pay the interest on said bonds promptly when due. (Ex. Sess. '19 c. 13 § 17)

6815. **Removal of bridges**—In case it is necessary to pass any dredge boat or other equipment through a bridge or grade of any railroad company or other corporation, county, township, or municipality, the board of directors shall give twenty days' notice to the owner of said bridge or grade that the same shall be removed temporarily to allow the passage of such equipment or that an agreement be immediately entered into in regard thereto. The owner of said bridge or grade shall keep an itemized account of the cost of the removal, and, if necessary, of the replacing of said bridge or grade, and said actual cost shall be paid by the district. In case the owner of said bridge or grade shall refuse to provide for the passage of said equipment, the board of directors may remove such bridge or grade at its own expense, interrupting traffic in the least degree consistent with good work and without delay or unnecessary damage. In case they shall be prevented from doing so, the owner of said bridge or grade shall be liable for damage for the resulting delay. (Ex. Sess. '19 c. 13 § 18)

6816. **Gages, etc.**—The board of directors shall also have the right to establish and maintain stream gages, rain gages, a flood warning service with telephone or telegraph lines or telephone or telegraph service, and may make such surveys and examinations of rainfall and flood conditions, stream flow, and other scientific and engineering subjects as are necessary and proper for the purpose of the district and they may issue reports of their findings. (Ex. Sess. '19 c. 13 § 19)

6817. **Contracts with U. S. government and individuals**—The board of directors shall also have the right and authority to enter into contracts or other arrangements with the United States Government, or any department thereof, with persons, railroads or other corporations, with public corporations and the state government of this or other states, with drainage, conservation, conservancy, or other improvement districts, in this or other states, for co-operation or assistance in constructing, maintaining and operating the works of the district or for the control of the waters thereof, or for making surveys and investigations or reports thereon; and may purchase, lease or

acquire land or other property in adjoining states in order to secure outlets to construct and maintain dykes or dams, or for other purposes of this act, and may let contracts or spend money for securing such outlets or other works in adjoining states. And may and are hereby authorized to exercise all the authorities granted the Board of Drainage and Flood Control Districts by Sections 229, 230, 231 and 232, Chapter 442, General Laws 1917, so far as relates to co-operation with adjoining states, or drainage authorities thereof, and in the event that for any reason it may be deemed advisable to include in any drainage and conservancy district organized under the provisions of this act a Drainage and Flood Control District organized under Chapter 442, General Laws 1917, the district board organized under the provisions of this act are hereby authorized to enter into any contract or arrangement necessary to take over and control and maintain any works or improvements constructed, including surveys made and expenses incurred by any board under Chapter 442, General Laws 1917, and adopt or assume and carry out or modify any plans or works completed or partially completed by such board and make the same a part of the system to be developed under the provisions of this act. (Ex. Sess. '19 c. 13 § 20, amended '21 c. 325 § 7)

6818. Right of land owners to use of water—The rights enjoyed by land owners whether private or corporate to the use of the waters of the district for any purpose whatsoever shall continue as it existed at the time of the organization of the district, and all such rights then existing shall be recognized and observed by the managing authorities of such district, and when the boundary line of any property abutting upon any stream or body of water, is changed in consequence of any improvement constructed by the district either raising or lowering the stage of water in such stream or body of water the rights of such abutting property owner of access to and use of such waters shall remain as it existed at and prior to the time of the construction of such improvement, but when improvements made by the district make possible a greater, better or more convenient use of or benefit from the waters of the district for any purpose, the right to such greater, better or more convenient use of or benefit from such waters shall be the property of the district, and such rights may be leased or assigned by the district in return for reasonable compensation as herein provided. (Ex. Sess. '19 c. 13 § 21, amended '21 c. 325 § 8)

6819. Applications for use of water—Persons, corporations, municipalities or other parties desiring to secure such use of the waters or water courses of the district rights therein, may make application to the board of directors for lease or permission for such use. Such application shall state the purpose and character of such use, the period and degree of continuity and the amount of water desired. In case any party makes greater, better or more convenient use of the waters of the district without formal application, the fact of such use shall serve all purposes of an application, and the board may proceed to determine a reasonable rate of compensation the same as though formal application had been made; provided, however, such use shall not be deemed an application unless the district shall have given the user three days' notice in writing that such greater, better or more convenient use of water is available; nor shall the user be obligated to pay for any use occurring prior to such notice. Where it is not possible nor reasonable to grant all applications, preference shall be given to the greatest need and to the most reasonable use, as may be determined by the board of directors, subject to the approval of the court.

Preference shall be given, first to domestic and municipal water supply, and no charge shall be made for the use of water taken by private persons for home and farm use, or for watering stock. (Ex. Sess. '19 c. 13 § 22, amended '21 c. 325 § 8½)

6820. When contracts may be made—The board of directors shall not sell, lease, assign or grant any permit or otherwise part with permanent control by the district of the use of the waters thereof, and all leases, assignments or permits of any kind or other contracts for the use of water shall be entered into only after a report has been made by the board of such district to the court setting forth the terms and conditions of said lease, permit or other contract relative to the use of any property of the district, whereupon the clerk of said court, shall give due notice to all parties interested by mail, and shall cause to be published notice of said application stating therein the purpose of said application and the time and place of hearing thereof, at which time the court may hear all showing made for and against such proposed contract and make its order accordingly; but subject to revision and control by the state law and such conditions and restrictions as may be necessary at all times to protect the interests of said district and of the public. Said leases or permits may be made for periods not to exceed ten (10) years, but subject to said conditions and subject to the rights of renewal for further reasonable period not to exceed ten (10) years on condition that a new determination may be made as to the reasonable charge therefor. (Ex. Sess. '19 c. 13 § 23)

6821. Regulations, rates, etc.—The board of directors may make regulations for the determination and measurement of the increased, or better, or more convenient use of, or benefit from the water supply of the district, for the purpose of determining rates of compensation, and for the purpose of securing to all parties interested, either within or without the districts including water power company, the greatest and best use of the water thereof. The board shall have power to determine the rates of compensation for such greater, better or more convenient use of or benefit from the water supply of the district, which rates of compensation shall be reasonable and may be based upon either a unit price per cubic foot used or unit price for theoretical horsepower developed or other practical method, and may require bond to be given to secure the payment for such use. Upon the determination of any rate, or rates, the board shall make a report of its determination to the court. The court shall thereupon cause personal notice by summons to be given to the parties interested, stating that such determination of rate has been made, that a hearing before the court will be had thereon on a certain day, and that objection may be made at such time to such determination of rates. A hearing may be had before the court, objections may be made and appeals taken in the same manner as in the case of the appraisal of benefits, but the rates as fixed by the court shall control until modified on appeal. In case no appeal is made within the time provided, or upon the final determination of the matter by the court, the determination of such rates of compensation shall be conclusive and binding for the term and under the conditions specified in the lease or other agreement. In case of failure of any user to pay for the use in the manner specified by order of the court, the board may compel payment or may enjoin further use until such payment is made. The rights under any lease or sale shall not extend to a change of use or of place, time or manner of use, except in so far as is specifically stated in the lease or other agreement. (Ex. Sess. '19 c. 13 § 24)

6822. Assessments for benefits—Whenever the board of directors of any district shall ascertain that any improvement will benefit lands or other property outside of the district, the board may file a petition for change of the boundaries of the district, or resident freeholders of the district may, in like manner, file petition for change of boundaries of the district upon which petition a like notice shall be given and like proceedings had as in the case of organization of a drainage and conservancy district, but the same shall be had in the district court of the county in which are situated the lands sought to be included in the district, if in only one county, otherwise in the district court of the county in which the original organization proceedings were had. (Ex. Sess. '19 c. 13 § 25, amended '21 c. 325 § 9)

6823. Various funds—The moneys of any drainage and conservancy district organized under the provisions of this act shall consist of three (3) separate funds:

1. A preliminary fund, which shall consist of funds to be provided as hereinafter specified, and can be used for preliminary work and general expenses.

2. A bond fund, which is the proceeds of bonds issued by said district, as herein provided, secured upon property of the district court is producing or likely to produce a regular income and to be used for the payments of the purchase price of said property or the value thereof, fixed by the court in proceeding, as herein provided, and for the improvement and development of such property.

3. A construction and maintenance fund, which shall be supplied by sale of county bonds and by special assessments to be levied as herein provided to supply funds for the construction and upkeep of the improvements of the district including the reservoirs, ditches, dykes, canals, and other works, together with the expenses incident to, and connected therewith. (Ex. Sess. '19 c. 13 § 26)

6824. Payment of expenses—After the filing of a petition under this act for the formation of a district, and the furnishing and filing of the bond, as provided in section 3 and 4 of this act, the costs of publication and other official costs of such proceedings shall be paid out of the general funds of the county in which the petition is pending, by warrant of the county auditor issued upon order of the court. In case the district is organized, such costs shall be repaid to the county out of the first funds received, by the district, through the levy of taxes or assessments or selling of bonds, or the borrowing of money. If the district is not organized, the costs shall be collected from the petitioners or their bondsmen; upon the organization of the district the court may upon ten days' notice to the county auditors of the counties affected make an order dividing the preliminary expenses between the counties included in the district in proportion to the interests of the various counties as may be estimated by the court; and direct the auditor of each county to issue his warrant upon the treasurer for the proportion of the preliminary expenses assigned to that county by such order. (Ex. Sess. '19 c. 13 § 27)

6825. Preliminary expense fund established—As soon as the district shall have been organized under the provisions of this act, and a board of directors shall have been appointed and qualified and a petition and bond has been filed with the clerk of said board as provided in Section 10 of this act; said board may file a petition with the district court in the county where said original petition was filed, asking that an order be made creating a preliminary fund for said district, at least ten days' notice of which shall be given to the county auditor of each county affected by the pro-

posed improvement which fund shall be of a size in proportion to the size of the district, and in the event said district shall include the whole or portions of five or more counties, said funds shall not exceed the sum of twenty thousand (\$20,000) dollars and may be of such less amount as the court may order, and the court, upon said hearing, may designate the amount of said fund, and fix the proportionate amount that each county affected by said improvement shall pay, in proportion to the area within said county affected by the proposed improvement, and thereupon the court shall order the county auditor, of each of said several counties to draw their warrants upon the treasury of their county for the payment of the amount specified in the court's order, payable to the treasurer of said district, and the sum so advanced by such county shall be charged to said district, and shall be repaid with interest to each of said several counties as soon as said district has funds for that purpose, and the funds so provided, shall be used by the board of said district for preliminary work and when said board shall incur expense for surveys or other preliminary work on any proposed improvement, all expense, including time, salaries or other expense connected with such work, shall be kept track of and figured in as the cost of construction in any such proposed improvement, and upon said improvement being ordered by the court and funds being provided for the construction thereof, as hereinafter specified, all sums advanced out of said preliminary funds shall be repaid and said funds replaced for further similar use on other improvements. The board of directors for any such district are hereby authorized to include in their petition to the court asking the creation of a preliminary fund or by separate petition at a subsequent date a request that the court shall in addition to the creation of said fund a further order authorizing the board of said district to levy upon the lands affected by the proposed improvement an assessment of such sum as may be found necessary to reimburse the county or counties for the sum advanced to create said preliminary fund, not to exceed, however, the sum of twenty (20c) cents per acre, and the court is hereby authorized to make such order; provided, that in all cases where the district includes the main stream of a basin draining more than 10,000 square miles that such application shall be accompanied by a plat, describing thereon according to government survey the lands that it is claimed will be benefited by the proposed improvement and the order of the court in such case shall designate the land in each county subject to such assessment upon the receipt of such order the board of directors of such district shall cause to be levied upon such benefited lands, such assessments as the court shall authorize and shall file with the county auditors of the several counties a list of lands within the respective counties affected by said assessment and upon the filing thereof or as soon thereafter as may be necessary, it shall be the duty of the county auditor to levy such assessment upon the lands specified and spread the same upon the assessment roll as in the case of other taxes; and it shall be the duty of the county treasurer to collect and receive such assessment and credit the same to said district and deduct from such assessment any sum, if any there is due, to such county and account to said district for all sums remaining. (Ex. Sess. '19 c. 13 § 28, amended '21 c. 325 § 10)

The amendment hereto contemplates a fund for each proposed improvement, either in petition for the improvement, or in a separate petition subsequently filed.—such funds are not to exceed in the aggregate \$20,000 (154-444, 192-184).

6826. Apportionment of costs—At the time set for hearing on the report and petition of the board of di-

rectors of any district and the report of the engineer asking for the establishment of any improvement under the provisions of this act or at any time subsequent thereto, upon five days' notice in writing to the auditors of the several counties containing property affected by such improvement the court shall apportion the amount of the total costs of the construction of said improvements, among the several counties affected in proportion to the benefits received and shall fix and determine the amount to be paid by each and upon similar notice to said county auditors, said judge of the district court may at any time modify said order as justice may require, or make additional orders covering additional expense. The word "expense" as used in this section shall be construed to mean every item of cost of said improvement from its inception to its completion and all fees and expenses paid or incurred, including all damages awarded, and upon the filing of said order or a certified copy thereof, with the auditors of the respective counties affected, together with a list of all property affected in said counties and a statement of all benefits and damages affecting the same, and such other information as the court by order may direct, it shall be the duty of the county board of said counties and they are hereby authorized to provide the necessary funds to meet the proportionate share of the cost of said improvement as specified in said order in the same manner as now provided in the case of judicial ditch proceedings, under Section 5542 of General Statutes of 1913, and amendments thereto [6696]. That immediately or at the earliest date possible, following the letting of a contract or contracts for the construction of said improvement, by the board of directors of said district, they shall cause to be made and filed with the clerk of said board and with the county auditor of each county affected a statement showing the total cost of said improvement including expenses as near as the same can be ascertained and the proportionate amount that the property within each county affected shall be required to pay on the basis as fixed by the order of the court, together with a list of all property benefited within such county and thereupon it shall become the duty of the county auditor of the respective counties to cause to be made and recorded the tabular statement and lien against the property benefited within his county the amount to be paid by the property in said county, in accordance with the provisions of Sections 5543 and 5544, General Statutes of 1913, and acts amendatory thereof [6703, 6705], and it shall be the duty of the county commissioners of said several counties to provide the funds to meet the proportionate share of the total cost of said improvement as shown by the report of the board of said drainage and conservancy district and the order of the court and they are hereby authorized to exercise all rights and authority in so doing, now granted to the board of county commissioners under the provisions of Sections 5542 and 5543 of the General Statutes of 1913, and acts amendatory thereof [6696, 6703] and other provisions of the General Statutes relating to county and judicial ditch proceedings. It shall be the duty of the respective county auditors and county treasurers to levy and collect the amount shown in said tabular statement and lien as provided in Sections 5546 and 5548 of General Statutes of 1913, and acts amendatory thereof [6712, 6713]. All moneys received by the county treasurer of any county from the sale of bonds, assessments or otherwise for the benefit of the district shall be by the county treasurer of such county accounted for and paid over to the treasurer of such district. (Ex. Sess. '19 c. 13 § 29, amended '21 c. 325 § 11)

6827. Assessments—Upon the filing by the board of directors of a drainage and conservancy district with

the county auditor of any county of the statement as provided in Section 29 of this act giving a list of the property and corporations benefited or damaged, or otherwise affected by any proposed improvement, it shall be the duty of the county auditor to assess the amount specified in such list against the lands and municipalities or other corporations as therein specified in accordance with the provisions of Section 5551 of the General Statutes of 1913 [6716] and the said county auditors, respectively, shall proceed to levy and collect the sums specified in said lists against the property and corporations in accordance with the provisions of said section, and in the event the sum so reported shall become a direct charge against said county and may be paid by such county out of its road and bridge fund or otherwise, as the county commissioners may direct, and may be paid in whole or in installments as may be specified by the board of county commissioners of each county, provided that no assessment shall be levied against any property or corporation benefited under the provisions of this act in excess of the amounts of benefits received as fixed by the order of the court directing the construction of said improvement or subsequently determined on appeal. (Ex. Sess. '19 c. 13 § 30, amended '21 c. 325 § 12)

6828. Issuance of orders—The board of directors of any drainage and conservancy district is hereby authorized to issue the orders of said district in payment for any contracts for the construction of any improvement and also for all ordinary general expenses and all expenses incurred by contract or otherwise in making repairs and when sufficient funds are not available to pay the same, said order shall after presentation to the treasurer of the district draw interest at the rate of 6 per cent per annum until paid or until notice shall be given by the district that said funds are available provided the board of directors shall never at any time issue or have outstanding orders of said district exceeding the sum of five thousand (\$5,000.00) dollars, except orders issued in payment of construction on any improvement, the funds for which have been provided or arranged for. (Ex. Sess. '19 c. 13 § 31)

6829. Upkeep and repair of district—The board of directors of any drainage and conservancy district organized under this act are hereby authorized after the construction of any improvement to levy from time to time as occasion may require upon the property and corporations benefited by such improvement, such sum as the court may order or direct upon application by the board for the purpose of providing funds for the upkeep and repair of such improvement, which application shall be heard upon such notice as the court shall direct, and upon filing a copy of said order and levy with the county auditor of each county affected by such improvement accompanied by a list of the property and corporations within the limits of said county affected by said levy, it shall be the duty of said county auditor to extend said levy against said property within the limits of his county, as provided in other cases for the levy, assessment and collection of taxes ordered, levied and collected by the board of county commissioners in ditch proceedings and upon like application and order the board of directors of any drainage and conservancy district are hereby authorized to levy upon the property and corporations benefited within the district as shown by the engineers' and viewers' report as finally adopted by order of the court such sum as the court may authorize and direct and to cover the general expenses of the board not to exceed, however, in any one district, the sum of five thousand (\$5,000.00) dollars, and the court shall by such order apportion the amount of such levy among

the several counties according to the area or valuation of the portion of each county within said district benefited by any particular improvement as shown by the engineers' and viewers' report, and upon the filing of a copy of said order showing the amount to be levied upon such property and corporations benefited within the limits of each county, the auditor of such county shall levy the same upon such property and corporations contained in such list within the limits of his county in the same manner and with like effect as in the levy of other taxes by municipal corporations in this state; and all sums collected and received by the county treasurer of such county shall be accounted for to the treasurer of said drainage and conservancy district, and the same shall be placed in the fund as provided in this act and used for the purposes for which said assessment was made. (Ex. Sess. '19 c. 13 § 32, amended '21 c. 325 § 13)

6830. When repairs are to be made—It shall be the duty of the board of directors of any drainage and conservancy district, upon being notified by the county board of any county, portions of which shall be within the limits of said district, that certain ditches, channels or watercourses within said county and district are in need of repair or improvement, to immediately or at the earliest possible date, investigate and report to said county commissioners the condition of said ditches, drains, or watercourses or other improvement needing repair and the amount and nature of the repairs required and the probable cost thereof; and upon said county providing the funds, it shall be the duty of the board to take charge of all matters pertaining to the making of said repairs, and let contracts therefor, or proceed to employ assistants and have said repairs made under the direction of the chief engineer; and in like manner it shall be the duty of the board of any drainage and conservancy district, organized under this act, upon the request of the county board in case of a county ditch, or of the district court in case of a judicial ditch, to take charge of the construction of any ditch then petitioned for; and thereafter, all work done upon the construction of any such ditch shall be under the supervision and control of the board of such drainage and conservancy district, who shall make reports thereon to the county board or the court as may be required, and the engineer of said drainage and conservancy district shall have supervision of said work and perform all duties as assigned and specified, with reference to engineer in charge of county or judicial ditch proceedings and shall have and may exercise like authority. (Ex. Sess. '19 c. 13 § 33)

6831. Board to have control of all contracts—In all cases where contracts are let by the board of directors of any drainage and conservancy district, said board shall have full control of all matters pertaining thereto, and in the event of a contractor failing to complete said improvement within the time or in the manner specified in his contract, said board shall have full authority to extend said time or refuse said extension and cancel said contract, and readvertise and relet said contracts they may deem proper, or may require the bondsmen for said contractor to complete the same or proceed and have said contract otherwise completed at the expense of the contractor, and his bondsmen, and take any other action with reference thereto that occasion may require in the interest of the district and the provisions of section 5541 of the General Statutes of 1913, as amended by chapter 441 of the General Laws of 1917 [6694], shall apply to and govern the relations between the board of the district and the contractor, including the examination and report of the engineer and the amount and time of payment

so far as applicable, and in all cases the board of directors shall have full control of all agents and employes engaged or appointed by them, and may fix their compensation and remove them at pleasure. They shall keep an accurate account of all expenses incurred; and the time and expenses of all employes, including the expenses of the members of the board while engaged in any improvement, which shall be charged up to and be treated as part of the costs of said improvement and the compensation for such services members of the board of directors of any district for such services shall not exceed the sum of five (\$5.00) dollars per day and their necessary expenses for the time actually employed in performing his duties, of which accurate account shall be kept by the secretary. (Ex. Sess. '19 c. 13 § 34)

6832. Neglect of affairs, etc.—The provisions of section 5569 of the General Statutes of 1913 [6732], relating to the obstruction or injury of work or neglect of duties by employes or officers, shall apply to any and all improvements made or authorized under the provisions of this act, and any other provision contained in the laws of this state relating to judicial or county ditches, providing for punishment for damages committed to or interfering with such work, shall apply to all improvements made under the provisions of this act. (Ex. Sess. '19 c. 13 § 35)

6833. Report of directors—At least once a year or oftener, if the court shall so order, the board of directors shall make a report to the court of its proceedings and an accounting of its receipts and disbursements to that date, which shall be filed with the clerk of said court, and it shall be the duty of said board from time to time to make such report as may be demanded by the public examiner, and it shall be the duty of the public examiner of this state to check up and report to the court not less than once a year and at such other time as the court may direct, the financial condition of said district. (Ex. Sess. '19 c. 13 § 36)

6834. Improper notices—In any and every case where a notice is provided for in this act, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void; but the court shall in that case order due notice to be given, and shall continue the hearing until such time as such notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance. In case any individual appraisal or appraisals, assessment or assessments, or levy or levies, shall be held void for want of legal notice, or in case the board may determine that any notice with reference to any land or lands may be faulty, then the board may file a motion in the original cause asking that the court order notice to the owner of such land or lands given and set a time for hearing, as provided in this act. And in case the original notice as a whole was sufficient, and was faulty only with reference to publication as to certain tracts, only the owners of and persons interested in those particular tracts need be notified by such subsequent notice. And if the publication of any notice in any county was defective or not made in time, re-publication of the defective notice need be had only in the county in which the defect occurred. (Ex. Sess. '19 c. 13 § 37)

6835. Question of validity—All cases in which there arises a question of the validity of the organization of conservancy districts shall be advanced as a matter of immediate public interest and concern, and heard in all courts at the earliest possible moment. The court shall be open at all times for the purpose of this act. (Ex. Sess. '19 c. 13 § 38)

6836. Liberal construction to be given—This act being necessary for securing the public health, safety, convenience or welfare, and being necessary for the prevention of loss of life and for the security of public and private property from floods and other uncontrolled waters, it shall be liberally construed to effect the control and conservation and drainage of the waters of this state. (Ex. Sess. '19 c. 13 § 39)

6837. Individual sections to stand—In case any section or sections or part of any section of this act shall be found to be unconstitutional, the remainder of the act shall not hereby be invalidated, but shall remain in full force and effect. (Ex. Sess. '19 c. 13 § 40)

6838. Reference to other chapters—In all cases where reference is made to other chapters of the General Laws of 1913 or to other drainage laws of this state, and sections thereof are referred to such sections and provisions, shall so far as applicable, be treated and construed as having the same force and effect so far as the provisions of this act are concerned as though herein set forth. (Ex. Sess. '19 c. 13 § 41)

6839. Continuation—Nothing in this act contained shall be construed to interfere with the application and use of any other drainage law of this state and all proceedings now pending may be completed under such drainage law, and any proceedings hereafter instituted under such law may be conducted thereunder except where such proceedings are instituted within, or affect property within the limits of any district organized under the provisions of this act; notice of the institution of such proceedings shall be given to the board of said district and said board or its engineer given an opportunity to be heard with reference to such proceedings affecting, interfering with, or injuring the plans and work of such district. Provided, further, that all rights and privileges that may be acquired by any drainage and conservancy district organized under the provisions of this act, shall at all times be subject to regulation and control by act of the legislature and all such rights and interests that may be acquired by any district hereunder shall be subject to the right of the state to take over and acquire title thereto upon such conditions and compensation as the legislature may specify. (Ex. Sess. '19 c. 13 § 42)

6840. Districts already established—Any drainage or flood control district heretofore or hereafter organized under chapter 442 of Laws 1917 may acquire the right to operate under and exercise all the rights and authorities of this act instead of chapter 442 as though organized hereunder by the governing board of said district, filing in the office of the clerk of the district court where the original petition for organization was filed, a petition to said court asking that said district be granted such authority, whereupon said clerk, with the consent of the judge of said court, shall fix time and place of hearing upon said petition, notice of which shall be given by publication for two successive weeks in one newspaper published in each county having territory within said district, and if at said hearing the court shall find that it is for the best interests of said district to be granted such authority, he may by order grant such petition, and thereupon and thereafter such district may exercise the authorities provided for in this act as though incorporated hereunder. (Ex. Sess. '19 c. 13 § 43)

6840-A. Proceedings started under all law to be completed under this act—That in all cases where proceedings are now pending for the organization of any drainage and conservancy district under the provisions of chapter 13 of the Laws of the Extra Session of 1919, and have not been completed and the order for the organization of such district has not been made at

the time of the passage of this act, then all subsequent proceedings for the completion thereof shall conform to the provisions of said act as hereby amended.

6840-B. May appeal to supreme court—All persons or public corporations affected by any order of the district court, establishing or refusing to establish a drainage and conservancy district, or affected by any order approving or refusing to approve the plans and directing the construction of the improvement, or affected by the determination in any district court of any assessment of benefits or damages, including the board and the petitioners, may appeal to the supreme court on any question involved in such determination, as in civil actions. The notice of appeal shall be served on the clerk of the district court and need not be served on any other person or corporation. ('21 c. 325 § 15)

TOWN DITCHES

6841 - 42
201-NW 613

6841. Definition of various words extended so as to apply word "engineer" to any competent surveyor—The following words used in this act shall have the meaning herein given unless another intention clearly appears: The word "ditch" as used in this act shall be held to include any open, covered or tiled ditch or drain or any ditch or drain in part open and in part tiled or covered, and any drain, watercourse or creek and any side, lateral, spur or branch ditches and each and all of the constructions referred to in this act. The word "board" as herein used means the board of supervisors of the town in which the lands or roads described in the petition are located, or, if said lands or roads are located in more than one town, then the word "board" means all of the supervisors of each one of the towns in which any of said lands or roads are located, acting together as one body at a legally called meeting. The town clerk of the town in which the petition was filed shall act as the clerk of said board and keep a detailed record of its doings. Two or more of said supervisors shall constitute a quorum of said board and a majority of the supervisors present shall have power to act. The words "town clerk" and "town treasurer" as herein used shall always be held to refer to the town clerk and town treasurer of the town in which the petition was filed. The word "engineer" as used in this act shall be held to include any competent surveyor. ('09 c. 127 § 1, amended '17 c. 293 § 1) [5634]

Recovery of contract price. Town officers as agents of the law and as representatives of town (124-78, 144+458). Taking of private property for ditch must serve public purpose (125-404, 147+274).

6842. Petition to be filed—Before any ditch shall be established under this act there shall be filed with the town clerk of any town in which any part of said ditch is proposed to be located a petition therefor signed by one or more persons or corporations owning lands which will probably be benefited by the construction of said ditch or by the chief executive officer of any city or village whose streets will probably be benefited by the construction of said ditch or by the town board of supervisors of any town whose highways will probably be benefited by the construction of said ditch, setting forth the necessity thereof, and that it will be of public benefit or promote the public health, with description of the proposed starting points, routes and termini and of the general character, size and depth of said ditch. Said petition shall also contain a legal description of all lands through which said proposed ditch shall run, or to be drained, as near as can be ascertained and shall also contain a description of all public roads and streets likely to be benefited thereby, as nearly as can be ascertained.

6841-42
161-M 4

The town board of any town shall have the same power of condemnation for the purpose of town drainage projects as are possessed by county boards in county ditch proceedings. In such petition the petitioners may, at their option, ask the appointment of an engineer to perform the duties hereinafter in this act specified, and may also at their option ask the appointment of an attorney at law to perform the duties hereinafter in this act specified. Also they may ask for the appointment of three resident freeholders of the town not interested in the construction of the proposed work, and not of kin to any of the parties known to be interested therein, as viewers to meet at a time and place fixed by the board. Such petition may include any side, lateral, spur or branch ditches necessary to secure the object of the improvement and may ask for the different parts of the ditch to flow in different directions with more than one outlet. Provided, that no meandered lake adjoining an incorporated village, or within four miles of any city of the fourth class, or upon which any incorporated village is a riparian owner shall be drained or lowered under the provisions of this act unless by the approval of a majority vote of the legal voters of such village or city at any annual or special election held for that purpose.

Provided further, however, that in case any such lake has no natural outlet and in times of highwater the run-off from adjacent lands fills up the bed of the lake so as to damage adjacent lands, then in such case it shall be legal, without the vote of such cities of the fourth class, to lower the surface of such lake by drainage until it shall reach the normal stage.

Such special election, if any, held for such purpose, shall be called in the way and manner provided by law for calling special election. ('09 c. 127 § 2, amended '19 c. 471 § 14) [5635]

124-78, 144+458. Land owner, party to proceedings, may have certiorari, but cannot enjoin construction of ditch (125-406, 147+273).

6843. Proceedings—Upon the filing of the petition such proceedings shall be designated and numbered by the town clerk as "Town Ditch No. of Town of" and may be so referred to in all subsequent proceedings regardless of whether or not said ditch is in fact in more than one town. ('09 c. 127 § 3, amended '17 c. 380 § 1; '19 c. 471 § 14½) [5636]

124-79, 144+458; 125-404, 147+274.

6844. Notice of hearing—Said town clerk shall forthwith fix a time and place for the hearing on said petition and shall forthwith give notice of the filing of said petition and of the time and place of the hearing thereon as follows:

(a) By posting at least three weeks prior to said hearing a copy of said notice and petition in a manner likely to attract attention in each of three of the most public places in each township in which lands described in the petition are located.

(b) By filing at least three weeks prior to the date of said hearing a copy of said notice and petition in the office of the clerk of each town, village or city in which lands described in the petition are located.

(c) By mailing at least three weeks prior to said hearing a copy of said notice and petition to each owner of lands described in the petition who is a resident of the state, and whose postoffice is known to said town clerk or can be ascertained by him from the petitioners.

(d) By serving at least three weeks prior to said hearing a copy of such notice upon each occupant of the several tracts of land described in the petition.

When said notice is not legally given or is defective for any reason, the town clerk shall give a new notice

of a time and place for hearing on said petition, as hereinbefore provided. ('09 c. 127 § 4) [5637]

124-80, 144+459; 125-404, 147+274.

6845. Hearing—At the time and place set for the hearing of said petition (or at any time or place to which said hearing may be adjourned from time to time as necessity may require, but not otherwise) the supervisors of all the towns containing lands described in said petition shall meet and hear and consider said petition, acting as one board. ('09 c. 127 § 5) [5638]

124-80, 144+459; 125-404, 147+274.

6846. Report of engineer and action of viewers—If the petition asks for the appointment of an engineer in said matter, said board shall, at said hearing, and before taking final action on said petition, appoint a competent engineer to make plans and specifications for said ditch and to superintend the construction thereof when established. Said engineer before entering upon his duties shall give a bond in the sum fixed by the board, payable to the towns in which any part of the ditch is proposed to be constructed for the use of such towns and also for the use of all persons aggrieved or injured by the negligence or malfeasance of said engineer, to be approved by said town clerk conditioned that he will diligently and honestly and to the best of his skill and ability perform his duties as such engineer, but said engineer shall not be required to continue his bond after the conclusion or abandonment of the work. He shall take an oath to faithfully perform his duties. Said engineer shall forthwith make a survey for said ditch and prepare detailed plans and specifications for the construction thereof and make prompt report in writing of his doings to said board. Upon the appointment of such engineer said board shall adjourn said hearing a sufficient time to enable the said engineer to make and file his report in the office of said town clerk, upon the filing of the engineer's report in the office of the town clerk the board shall immediately fix a time and place in which the viewers, if any one appointed, are to meet for the purpose of viewing the proposed ditch, if no viewers have been appointed then the committee appointed by the board shall immediately proceed with or without the engineer to proceed to assess benefits and damage by the reason of the construction of the proposed ditch in accordance with the rules as mentioned in section 6849 of this act and file their report in the town clerk's office and the town clerk shall forthwith fix a time and place for a hearing on said report and shall again give notice to all parties interested and to all land owners whose lands are liable to be benefited or damaged by the reasons of the construction of the proposed ditch. Said notice shall conform to all requirements as the notice required on the petition as set forth in section 6844 of this act. ('09 c. 127 § 6, amended '17 c. 380 § 2) [5639]

6847. Attorney-at-law—If the petition asks for the appointment of an attorney-at-law in said proceeding, said board shall forthwith, at the beginning of said hearing, by resolution, employ an attorney-at-law to superintend the drafting of all papers, contracts and orders in said proceeding and to give legal advice on all legal matters and questions arising in said proceeding. The rate of compensation of said attorney-at-law may, at the option of said board, be fixed in the resolution employing him. ('09 c. 127 § 7) [5640]

6848. Order establishing ditch after hearing—All persons interested may appear and be heard by and before said board. If such board from such evidence as may be adduced before them shall find that all of the proceedings in the matter have been in accordance with the provisions of this act and that the estimated benefits of said work are greater than the total

cost, including damages awarded, and that said work will be of public utility or promote the public health, they shall establish said ditch by an order to be signed by them and shall include in said order, either expressly or by reference to maps, plats, specifications or papers on file in the office of said town clerk in said matter, an accurate description of said ditch and of the starting points, routes and termini, size and depth of said ditch and whether open, tiles or covered. They shall also fix a time for the completion of said ditch. Said board shall also include in their final order establishing said ditch a tabular statement showing the names of the owners of, the legal descriptions of and the number of acres in each tract of land to be benefited or damaged, the said names to be the same as appear on the tax duplicates of said county, the estimated number of acres in each of said tracts to be benefited or damaged, the number of acres added to any tract by the change of any watercourse and the location and value of said added land, the damage, if any, to riparian rights pertaining to any tract, the amount that such tract will be benefited or damaged by the construction of said work. When any ditch established under this act benefits either in whole or in part any public road or street within the limits of any town, village or city, charged with the repair thereof, said board shall estimate and report separately in such tabular statement the benefits to each public road or street, together with the names of the town, village or city charged with the repair thereof. They shall also report in such tabular statement the damages awarded for injury to any road or roadbed, and after the construction and maintenance of any bridges, culverts or other work necessary to the establishment of such ditch they shall make an order setting forth that fact and their reasons therefor. ('09 c. 127 § 8, amended '17 c. 380 § 3) [5641]

125-406, 147+273. After completion of ditch, party to proceedings is barred from collaterally attacking validity of ditch proceedings (120-147, 139+286).

6849. Benefits and damages, how ascertained—The board in ascertaining benefits and damages, and also the court on appeal, shall be guided as far as the same are applicable, by the rules for ascertaining benefits and damages in case of county ditches as set forth in chapter 230 of the General Laws of Minnesota for 1905. ('09 c. 127 § 9) [5642]

6850. Costs and expenses—The ditch petitioners shall advance all costs and expenses of said ditch proceeding from its inception to its completion, including damages awarded and the costs of constructing said ditch, which costs, expenses and damages so advanced shall be repaid pro rata to said petitioners as herein-after provided. They shall promptly upon making such payments, no matter whether complete or partial, file with the town clerk a verified statement showing in detail the amount and date of payment and to whom and for what paid. ('09 c. 127 § 10) [5643]

Entire cost falls upon petitioners and not upon town (124-78, 144+458).

6851. Securities required—The board are hereby directed to require such securities as they may deem necessary, suitable and proper, from the petitioners for the proper performance of all their duties under the terms of this act. ('09 c. 127 § 11) [5644]

124-78, 144+458.

6852. Authority to enter lands—For the purpose of making examinations and surveys, the board and the engineer and any person or persons named by the court on appeal, are authorized to enter upon any land and to do any act necessary for the proper performance of their duties, and any person attempting to prevent or interfere with them shall be guilty of a misdemeanor. ('09 c. 127 § 12) [5645]

6853. Appeal to district court—Jury—Any person aggrieved thereby may appeal from any order of said board made in the proceedings and filed in the office of said town clerk, determining any of the following matters:

(1) The amount of benefits to any tract of land or to any public road or street.

(2) The amount of damages allowed to any person, town, village or city.

(3) Refusing to establish such proposed ditch.

To render such appeal effectual the appellant shall file with the town clerk within twenty days from the date of the filing of such order in his office, a notice of appeal stating briefly the grounds upon which the appeal is taken, accompanied by an appeal bond to the town treasurer in an amount of not less than \$250.00, to be approved by the town clerk, conditioned that said appellant will duly prosecute the appeal, pay all costs that may be adjudged against him and abide the order of the court. Within twenty days after such filing the town clerk, at the expense of the appellant, shall file in the office of the clerk of the district court of the county in which said town clerk resides, a complete transcript of all the papers and proceedings in the premises on file and of record in his office, including the notice of appeal. Any appellant deeming himself aggrieved by the determination in an order of the board establishing the proposed ditch, as to the amount of his benefits or damages, may demand in writing, a jury trial to determine the amount of his benefits or damages and such demand shall be filed in the office of the clerk of the district court within twenty days after the filing of the notice of appeal in the office of said town clerk. If no such demand is filed, the appeal shall be tried by the court without a jury. The appeal shall be duly tried and determined at the next term of the district court held within said county, beginning after the filing of such transcript and shall take precedence of all matters of a civil nature in said court. If there be more than one appeal they may be consolidated and tried together. If the appellant is unsuccessful he shall pay to said town treasurer all of respondent's costs and disbursements, to be taxed and allowed by and before the clerk of said court. The construction of such ditch shall not be delayed or prevented by the prosecution of any appeal if the petitioners shall give bond in amount and with sureties to be fixed and approved by the town clerk, conditioned for the payment of all damages finally awarded on said appeal and to abide the orders and judgments of the court entered thereon. It shall not be necessary to serve any notice of trial or file any note of issue in the district court on such appeal. ('09 c. 127 § 13) [5646]

125-403, 147+273.

6854. Appeal from order refusing to establish—Upon an appeal from an order refusing to establish said ditch the court shall hear the entire matter de novo, without a jury and include in its final order and findings all of the matters and data required in the final order of the town board. As soon as final judgment is entered on an appeal, a certified copy thereof shall be transmitted by the clerk of the district court to said town clerk and shall be attached to the original order of the board and shall have the effect of modifying said original order so as to make it conform with said judgment. ('09 c. 127 § 14) [5647]

6855. Appeal to supreme court—Any aggrieved party to said ditch proceeding may appeal to the supreme court as in civil actions, from any final order made in the district court, within thirty days after the filing of such order. The notice of appeal shall be served on the clerk of the district court and need not

be served upon any other person or corporation. ('09 c. 127 § 15) [5648]

6856. Extension of time for construction—Whenever the letting of the contract for the construction of said ditch is delayed either by lack of bidders or by appeals or by other proceedings in court, said town clerk shall by his order in writing extend the time limit in the order establishing said ditch for the construction thereof to compensate for said delay and as necessity may require. ('09 c. 127 § 16) [5649]

6857. Job, how sold—Contract—Bond—Within ten days after the filing of the order establishing said ditch the town clerk shall post notice in each of three of the most public places in each of the towns through which said ditch extends, and also in the office of the auditor of the county in which said ditch is located of the time and place at which he will sell to the lowest responsible bidder or bidders the jobs of constructing said ditch. When the estimated cost of the construction is more than \$1,000.00 the town clerk shall also advertise such sale of jobs in two newspapers, one of which shall be the paper in which the delinquent tax list is published in the county in which said ditch is located, and the other a legal paper published nearest the proposed work. Said notice shall state the approximate amount of work and the estimated cost and shall invite bids for the work as one job and also in such divisions as the petitioners may in writing request, and shall reserve the right to reject any and all bids, and no bid shall be entertained which exceeds the estimated cost of the construction of the part of said work covered by said bid more than 30 per cent. Said town clerk may adjourn such letting from time to time until the whole work shall be taken. If an engineer has been appointed, no contract shall be let without the approval of said engineer. Said town clerk may sell separately any job of building of flumes or other wood or masonry work, fencing or other construction work specified either directly or by reference in the order establishing said ditch. The town clerk shall contract separately in the name of the petitioners, with each party to whom any of such jobs are sold, requiring him to construct the same in the time and manner specified in the provisions of the final order establishing said ditch, and shall take from him a bond in the penal sum of not less than the contract price, payable to the petitioners for the use of such petitioners and of all persons and municipalities and towns who may show themselves to be aggrieved or injured by any breach thereof, or of the contract for which said bond is given with sureties, to be by said town clerk approved, conditioned that said party shall faithfully perform and fulfill his contract, and pay all damages which may accrue by reason of failure to complete the work in the manner and within the time required in the contract therefor, which bond shall include a stipulation that no change, extension, alteration or addition to the terms of the contract or specifications shall in any wise affect the obligation of the principal or sureties on said bond. The contractor or contractors may each require the signatures of each of the petitioners to the contract and if any of the petitioners fail to sign said contract or contracts, said contractor or contractors may require that an amount of money equal to the contract price be deposited with the town treasurer to secure payment of said contract price upon the completion of said contract. ('09 c. 127 § 17) [5650]

124-78, 144+458.

6858. Bond and contract—The bond and contract shall be attached to each other and the contract shall contain a specific description of the work to be done, either expressly or by reference to plans, specifications,

the order establishing said ditch or other papers on file in said town clerk's office and shall provide that the work shall be done and completed as provided for in the final order establishing said ditch and subject to the approval of the engineer, if there be one, and if not then to the approval of the board. Said contract and bond shall be drawn to the satisfaction of the engineer, if there be one, and to the satisfaction of the attorney-at-law, if there be one. Every such contract shall embrace all the provisions provided by law for the giving of bond by contractors for public works and improvements and for the better security of the parties performing labor and furnishing material in and about the performance of such contracts, and shall provide that time shall be of the essence of the contract in that if there should be any failure to perform the work according to the terms of said contract, within the time limited therein originally, or by extension, the contractor shall forfeit and pay to the petitioners a certain sum to be named therein and which shall be fixed by the town clerk for each day that such failure shall continue. No extension of time shall be granted unless applied for in writing to the town clerk, stating to his satisfaction good and sufficient reasons therefor, nor, in case there be an engineer, shall an extension of time be granted unless said engineer is satisfied that good and sufficient reasons exist therefor, nor shall any extension affect the right to enforce such forfeiture if any, as shall occur after the time originally limited and before such extension or occurring after the limit of the extension. The bond shall expressly provide that the bondsmen shall be liable for all damages resulting from such failure whether the work be resold or not, and that any person showing himself injured by such failure may maintain an action upon such bond in his own name and that such actions may be successive in favor of all persons so injured. Such contractor shall be considered a public officer and such bond an official bond within the meaning of the statutory provisions construing such official bonds of public officers as security to all persons and providing for actions on such bonds by any injured party in the district court. ('09 c. 127 § 18) [5651]

Status of contractor's bond same as that of public officials (126-438; 148+454). Dismantling and reassembling dredge is incident of contract and subject of liability of contractor's sureties (126-438, 148+454).

6859. Modification of plans—The engineer, if there be one, and if there is no engineer, then the board, shall have the right to modify the plans and specifications contained in the final order establishing said ditch as the work proceeds and as circumstances may require; provided, no changes are made that will substantially impair the usefulness of any part of the ditch or substantially alter its original character or increase its total cost by more than two per centum of the total contract price for the construction thereof. ('09 c. 127 § 19) [5652]

6860. Failure of contractors—If a job be not completed within the time fixed in the contract therefor the town clerk shall forthwith notify the bondsmen in writing and order them to complete said job within a time specified by him. If the completion of said job shall not be undertaken by said bondsmen within twenty days after the date of said order, the petitioners may proceed to complete said job upon the giving of a bond containing like conditions as the original contractor's bond. The board shall determine the proportion of the contract price to be paid to the contractor and the proportion thereof to be paid to the parties completing said ditch. The petitioners and all other parties damaged or injured by the failure of the contractor to complete his job as called for by his contract

6859
201-NW 613

shall have right of action and recover against the bondsmen. ('09 c. 127 § 20) [5653]

6861. Damages, how paid—No ditch shall be constructed until the damages assessed shall have been paid or deposited as follows: Payment of the damages awarded may be made or tendered at any time after the filing of the order establishing said ditch and acceptance of such payment shall be taken as a waiver of all objections to said order and to the proceedings leading thereto on the part of the payee and of all persons for whom he is lawfully empowered to act. In case any party to whom an award of damages is made be not a resident of the state or his place of residence be unknown or he be an infant or other person under legal disability or being legally capable, refuse to accept payment, or if for any reason it be doubtful to whom an award should be paid, the petitioners may pay the sum to the town treasurer, to be paid out under the direction of the board and unless an appeal be taken as herein provided, such deposit with the said treasurer shall be deemed a payment of said award. If an appeal be taken from the award of damages then when judgment is entered fixing the amount of damages, the petitioners shall pay said damages as fixed by the judgment of the court, with costs and interest in the same manner as if said damages as fixed by the judgment of the court with costs and interest had been the amount originally awarded in the order establishing said ditch. ('09 c. 127 § 21) [5654]

6862. Supervision—Certificate of completion—If no engineer has been appointed, then said ditch shall be constructed under the supervision of the board, which shall have authority to approve the same. If an engineer is appointed, then said ditch shall be constructed under the supervision of said engineer, who shall have authority to approve the same. Upon the town clerk being advised that said ditch is completed, he shall notify the engineer, if there is one, and if not, call a meeting of the board. Thereupon said engineer or said board, as the case may be, shall inspect said ditch and if found complete and according to the order establishing the same, shall certify to said fact in writing and file said certificate in the office of said town clerk. The contractor or contractors shall, upon said certificate being filed, be entitled forthwith to payment in full from said petitioners. ('09 c. 127 § 22) [5655]

Failure to allege certificate of inspection (124-78, 144-458).

6863. Statement and summary—Upon the filing of said certificate of the board or of the engineer, as the case may be, the town clerk shall, at the earliest practicable time, make a tabular list and statement showing the following facts and in the order named:

1. The names of the owners of all lands benefited by the construction of such proposed work as appears from the order establishing said ditch as affected by the judgment of the district court on appeal.

2. The description of such lands as the same appears in said order establishing said ditch as so affected, together with the total number of acres in each tract according to the assessment rolls or tax lists of the county.

3. The estimated number of acres benefited in each tract of said land as shown as aforesaid.

4. The estimated amount of benefits and damages to each of said tracts of land as the same appears in said order as changed, on appeal, by the district court.

5. The respective public roads and streets benefited by said ditch, the estimated amount of such benefits to each of said public roads and streets, and the names of the respective cities and towns and villages charged with the repair thereof, all as appears in said order

establishing said ditch, as affected by the judgment of the court on appeal.

6. The amount that each of said tracts of land and that each of said towns, villages and cities that are charged with the repair of the several benefited public roads and streets, will be liable for and must pay for said ditch to be determined as follows:

Said town clerk shall make a full statement showing the total cost of such ditch from its inception to its completion, show to whom paid, for what paid and the amount paid. Said statement shall be summed up to show in figures the total cost of each ditch and shall be attached to and form a part of the list and statement herein provided for. The total cost shall then be divided by the total estimated benefits for the rate of cost on each dollar of benefit, not using a smaller fraction than one-tenth of one mill. The amount of estimated benefits to each tract of land shall be multiplied by said rate and the result set down in the proper column opposite each of said tracts of land, and the result so obtained shall be the amount that each of said tracts of land will be liable for on account of such improvement. The amount of estimated benefits to each public street or road shall be multiplied by said rate and the result set down opposite the name of the respective towns, villages and cities charged with the repair of said respective roads and streets, and shall be the amounts that each of said towns, villages and cities will be liable for on account of such improvement. All assessments against tracts of land, owned by any one or more petitioners shall be marked paid by the town clerk. It is the intention of this act that the balance of the assessments shall be ultimately paid over when collected to said petitioners to recompense them for the costs advanced on said ditch. ('09 c. 127 § 23) [5656]

6864. Statement, how executed—Record—Liens—Such statement signed by the town clerk in the presence of two attesting witnesses and acknowledged by him, shall then be duly filed with and recorded by the register of deeds of each county in which lands, roads or streets are located, that are described in said statement. The amount which each tract of land and each town, village or city will be liable for and the interest thereon as hereinafter provided, shall be and remain a first paramount lien on such land and on such town, village or city until fully paid and shall take precedence of all mortgages, charges, encumbrances or other liens whatever. Such payments may be made as hereinafter provided. Such filing shall be deemed notice to all parties interested of the existence of such lien. The fees of the register of deeds for such recording shall be paid by the petitioners and shall be included in said statement as a part of the total cost of said ditch. Said recorded statement shall be returned to the town clerk and preserved by him with the other papers relating to such ditch. ('09 c. 127 § 24) [5657]

6865. Collection of assessments—Interest—Discharge of lien—The amount that each tract of land, public or corporate road shall be liable for on account of the location, construction and establishment of any ditch, shall bear interest from the time of the filing of the town clerk's statement in the register of deeds' office, at the rate of 6 per cent per annum until paid. Such liens may be paid to the county treasurer at any time after the recording of such statements in said register of deeds' office. When payment of the full amount of such liens, with interest, shall at any time be made, the town clerk, upon presentation of a receipt from the county treasurer to that effect, shall issue under his hand and seal a certificate of such payment and the same when recorded in the office of the

register of deeds shall release and discharge such lien of record. On or before November 15th next following such filing, the town clerk shall notify the auditor of each county in which said statement is filed, of the time of such filing and of the book and page in the office of said register of deeds of said county at which said statement is filed and of the certificates of payment in full that he has issued and said auditor shall thereupon forthwith enter on the tax lists of said county the amount of such lien then remaining unpaid against each respective tract of land subject thereto, as a tax on such tract which shall be subject to and be collected with like penalties as all other taxes for said year, until all is paid. ('09 c. 127 § 25) [5658]

6866. Roads benefited—Liability of municipalities—Assessments, how collected—Whenever any public road or street shall have been found by the order establishing said ditch to have been benefited, the town, village or city which is by law chargeable with the duty of keeping such road or street in repair shall be assessed as hereinbefore provided, the pro rata amount of such benefits accruing to such roads or streets within said city, village or town by reason of such ditch, and the same shall thereupon become a liability of such city, village or town and shall be due on the filing of the town clerk's statement in the office of the register of deeds for record. Thereupon the town clerk shall forthwith issue a warrant to the treasurer of the town in which said petition was filed, requiring him to pay into the ditch fund of said ditch the amount of the assessment of the town of which he is treasurer, which said town treasurer shall forthwith do upon receiving said warrant. Said town clerk shall at the same time notify, by mail or otherwise, the clerk of each other town, city or village of the amount due from said respective town, city or village. If not paid to the town treasurer within thirty days, the town clerk shall notify the county auditor of the proper county in writing, thereof, who shall thereupon extend the amount thereof with interest at six per centum per annum from said day of filing in said register of deeds' office against all the property in such city, village or town liable to taxation, and the same shall become due, be paid, and collected in the same manner and with like penalties as other taxes for that year. ('09 c. 127 § 26) [5659]

6867. Assessments, how disposed of—All assessments when collected by the county treasurer or county treasurers shall forthwith be transmitted to the town treasurer of the town in which said petition was filed, to be kept by him in a separate fund to be known as "Fund of Town Ditch No. of Town of" and the petitioners for said ditch who have paid for the construction thereof and for the costs and expenses of said ditch, shall be entitled to repayment from said fund of all moneys received by the town treasurer as the proceeds of said assessments and interest. Such payment shall only be made upon warrant drawn by the town clerk, who shall have power to draw such warrant without any order of said board. ('09 c. 127 § 27) [5660]

6868. Documents, where filed—All petitions, resolutions, orders, engineer's reports, notices of appeal, bonds of engineer, affidavits, oaths and other instruments and papers having to do with said ditch proceeding shall be forthwith filed in the office of the town clerk where said petition was originally filed. ('09 c. 127 § 28) [5661]

6869. Meetings of board, how called—The town clerk of the town in which said petition is filed shall have power whenever necessary in said ditch proceeding to call a meeting of the board at such time and place as he may designate, upon three days' notice

given each member of the board of supervisors of each one of the towns in which any of the lands or public roads described in the petition are located. It shall be a sufficient statement of the objects and purposes of said meeting in said notice to say that it is called pursuant to the provisions of this act. ('09 c. 127 § 29) [5662]

6870. Appointment of other engineers—If the engineer appointed by the board fails to qualify, or at any time resigns, dies or becomes disabled during the progress of the work, the board shall forthwith appoint another civil engineer having the qualifications required by this act in the stead and place of the engineer first appointed, who shall give the bond and take the oath required by this act and shall do all things remaining to be done by the original appointee. ('09 c. 127 § 30) [5663]

6871. Duty of railroads—Penalty—It shall be the duty of every railroad company in this state, owning a right of way therein, over, under or through which it shall be necessary to construct any ditch in any drainage proceeding hereunder, to permit such ditch to be constructed over its said right of way; provided, such ditch across said right of way shall be an underground ditch when practicable, otherwise to be constructed in the usual and ordinary manner, and so as not to impair the usefulness of the railroad. Any railroad company in this state refusing permission or continuing to obstruct the construction of such drain across its right of way after the same has been ordered and written permission demanded for the construction of the same by the contractor or party entitled to construct the same, shall forfeit the sum of \$25 per day for each and every day that such refusal or obstruction continues or is made after such written demand, to be recovered in a civil action by the contractor or other party aggrieved. ('09 c. 127 § 31) [5664]

6872. Repairs—Said board shall have power to enlarge, deepen, widen, lengthen and repair said ditch and the proceedings therefor shall be commenced by a like petition and the costs and expenses thereof shall be paid in like manner by the petitioners and the assessments shall be made and collected and all other proceedings shall be had, as nearly as may be, as in case of a new ditch. ('09 c. 127 § 32) [5665]

6873. Obstructing or injuring work—Failure of officers—Penalties—Any person wilfully or negligently obstructing or in any way injuring any work constructed under the provisions of this act or allowing such ditch to be injured or obstructed by his live stock, horses or cattle or diverting the water in said ditch or interfering with the construction of said ditch, shall be guilty of a misdemeanor and shall also be liable to any or all persons or corporations injured by said act, in treble damages. Any town clerk, member of a town board of supervisors, town treasurer, register of deeds or other officer who refuses or neglects to perform any of the duties imposed upon him by this act shall be guilty of a misdemeanor and shall also be liable to any person injured by this act, in treble damages. The county attorney of said county shall prosecute all criminal actions arising under this act. ('09 c. 127 § 33) [5666]

Contractor's action for damages for interference and what must be proven (125-302, 146+1110).

6874. Compensation of engineer and viewers—The engineer, if appointed, shall receive the sum of \$5.00 per day for every day he is necessarily engaged in performing the duties required of him by this act and his actual and necessary expenses incurred in and about the same. The members of the board shall each receive \$3.00 per day for every day they are neces-

sarily employed in acting on said ditch proceeding or in viewing said ditch and making up and filing their orders and their actual and necessary expenses. The viewers shall receive the same compensation as the town board do for their work. Each rodman shall receive the sum of \$2.00 per day and may be allowed in addition thereto his board and lodging for each and every day he is employed and each chainman, axman and other employee necessary to the prompt execution of the work of locating or inspecting said ditch shall be allowed \$1.50 per day and may be allowed in addition thereto his board and lodging for the time such person is thus actively employed. The town clerk, the town treasurer, the register of deeds, constable and other officers shall be paid the same fees as are allowed by law for similar service or if no fees are allowed then they shall receive reasonable compensation for their services. Such compensation shall be in addition to all sums allowed by law at the time of the passage of this act. The attorney at law shall receive reasonable compensation for his services. The fees per diem, compensation and expenses shall be before payment, audited and allowed by the town clerk and shall be paid by the petitioners from time to time. ('09 c. 127 § 34, amended '17 c. 380 § 4) [5667]

6875. Parties not affected cannot question proceedings—No person shall be permitted to take advantage of any error committed in any proceeding under this act either by the board, engineer, town clerk, town treasurer or by the court or by any person nor of any informality, error or defect appearing in the record of such proceedings unless the party complaining thereof is directly affected thereby. If the court shall at any time modify an assessment or enjoin the collection thereof or release any person from the liability thereof, it shall in no manner affect the liability or rights of any other person. ('09 c. 127 § 35) [5668]

6876. Act liberally construed—This act shall be liberally construed so as to promote the public health, the construction and improvement of roads and the drainage and reclamation of wet or overflowed lands. It shall not be construed as repealing any drainage law except as herein expressly provided. ('09 c. 127 § 36) [5669]

6877. Record as evidence—The record of every order of the board laying out and establishing any ditch or refusing to establish the same under the provisions of this act and the record of every judgment on appeal or a certified copy of such record shall be prima facie evidence of the facts therein stated and of the regularity of all the proceedings prior to the making of said order or judgment. ('09 c. 127 § 37) [5670]

6878. Orders and notices, how served—All orders, judgments and notices herein prescribed, not otherwise provided for, shall be served by any constable or other disinterested person designated by the town clerk or by the court, and such constable or other person so designated shall be paid the same fees by the petitioners as are allowed by law for similar service. ('09 c. 127 § 38) [5671]

OVERFLOWED LANDS—STREAMS—LAKES

6879. District court judge vested with jurisdiction to establish drainage and flood control districts—Whenever it shall become necessary or expedient in order to facilitate or control drainage into or from any lake, pond or other body of water or any river, stream or water course, which forms to any extent the boundary line between this state and any other state or when it shall become necessary in order to control, to any extent, floodwaters into, through or from any such lake, body of water, stream or water course to raise, lower

or otherwise affect the stage or depth of water therein or in any stream, river or water course flowing into this state therefrom or from any drainage basin in another state which drainage or flood control shall cause benefit or damage to or otherwise affect property in this state and to some extent in such other state, the district court of any county in this state or any judge thereof in vacation is hereby vested with jurisdiction, power and authority upon the filing of a petition as specified in section 2, of this act and the conditions stated are found to exist, to establish a drainage and flood control district and define and fix the boundaries thereof which districts shall include territory abutting upon such boundary waters or affected by waters flowing into or from such boundary waters and may include territory within or partly within and partly without any county and may include the whole or any part of one or more counties including the county in which said petition is filed but shall include territory forming the whole of a natural river or drainage basin and within which the waters directly or through tributaries find their way into and through one common outlet, and said court is hereby vested with jurisdiction, power and authority under the conditions provided in this act, to make all necessary orders providing for the construction of any and all improvements specified in this act, as may be found necessary for any of the following purposes within any such district so organized, or affecting such boundary waters or any river, stream or water course flowing into or from the same within the limits of this state including rivers or bodies of water affected by the overflow from such boundary waters.

(a) For regulating streams, channels or water courses by changing, widening, deepening, straightening the same or otherwise improving the use and capacity thereof.

(b) For reclaiming by drainage, or filling, dyking, or otherwise protecting lands subject to overflow.

(c) For providing for irrigation where it may be needed.

(d) For regulating the flow of water in streams or water courses.

(e) For regulation and control of flood waters and the prevention of floods, by deepening, widening, straightening or dyking the channels of any stream or water course, and by the construction of reservoirs or other means to hold and control such waters.

(f) For diverting in whole or in part streams or water course and regulating the use thereof, and as incident to and for the purpose of accomplishing and effectuating all the purposes of this act, may make all such orders as may be necessary to authorize and direct the straightening, widening, deepening or changing of the course or terminus of any natural or artificial water course and to build, construct or maintain all necessary dykes, ditches, canals, levys, wall-embankments, bridges, dams, sluice ways, locks and other structures that may be found necessary and advisable, and to create and establish and maintain the necessary reservoirs or other structures; to hold, control and regulate any and all flood waters within said districts, and acquire title to, in the name of said district of all necessary lands and other property to construct and maintain reservoirs, dykes or other structures to secure the proper control of the flood waters within said district. Provided, nothing in this act contained shall be construed to interfere with the operation and use of any drainage law of this state. ('17 c. 442 § 1)

Drainage and flood control act held constitutional, including right to organize district, appoint board, etc. (140-19, 167+122).

6880. Petition signed by free holders setting forth certain facts necessary before establishment of district—Before any district court shall establish any drainage and flood control district as outlined in section 1 of this act, a petition shall be filed in the office of the clerk of the district court in any county containing territory to the extent of five townships included in said proposed district which shall be signed by not less than 25 resident freeholders from each county abutting upon the main stream of the district having more than five townships within the proposed district.

Said petition shall set forth:

1. The proposed name of said district.
2. The necessity for the proposed work; and that it will be conducive to the public health, safety and convenience and promote the welfare of the inhabitants of said district; and aid in the control of flood waters in said boundary waters and streams or rivers flowing into or from the same in this state.

3. A general description of the nature and purposes of the contemplated plan of improvement, explaining the necessity therefor, and shall include, in general terms, a description of the territory proposed to be included in said district. Said description need not be given by metes and bounds or by legal subdivision, but shall be a sufficiently definite and accurate description so that the territory affected may be generally understood, and, unless good reason be shown to the contrary, the same shall include all territory within a given watershed or drainage basin or all territory from which the water from natural or artificial channels find their course through one general stream or channel. The territory to be thus included in any district shall be limited to territory within the natural watershed of the particular basin petitioned to be organized.

4. Said petition shall pray for the organization of the district, the appointment of a governing board therefor and that the boundaries thereof may be specifically fixed and defined by order of said court and said district organized.

No petition containing a requisite number of signatures or petitioners shall be void or dismissed on account of any defects therein but the court shall at any time permit the petition to be amended in form and substance to conform to the facts by correcting any errors in the description of the territory or by supplying any of the defects therein. Several similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and all together be regarded as one petition and any withdrawal of any signatures or petitioners from such petition after the same has been filed, shall in no manner affect the jurisdiction of the court, and all petitions filed prior to the hearing hereinafter provided shall be considered by the court as a part of the original petition. Provided; that no district shall be organized under the provisions of this act in any basin consisting of a stream or river wherein waters are flowing from any lake or body of water constituting the boundary waters where the territory of said district shall extend farther than forty miles in a direct line along said valley from said boundary waters, but may include all tributaries that enter said basin or connect said stream within the limits of said district. ('17 c. 442 § 2)

6881. Petitioners to file bond to pay expenses connected with proceeding—At the time of filing the petition provided for in section 2, of this act, or before the notice of hearing thereon is given, a bond shall be filed by said petitioners with the clerk, to be approved by said court and in such sum as he shall designate, sufficient to pay all expenses connected with said pro-

ceeding, in case the court refuses to organize said district, and, if at any time during the proceeding the court shall be satisfied that an additional bond is needed, he may so order, provided that if the petition is signed by the proper officials of two or more counties, accompanied by a copy of a resolution passed by the board of county commissioners of said counties, that said counties will be responsible for such costs, then, and in that event, no bond shall be necessary. ('17 c. 442 § 3)

6882. Court to fix time and place for hearing petition—Upon the filing of said petition with the clerk of the district court, as provided in section 3 of this act, he shall immediately notify the judge of said court of the filing thereof, who shall within ten days thereafter, by order, fix a time and place for hearing on said petition at some point within the limits of said proposed district, notice of which hearing shall be given by a publication in at least one legal newspaper in each county affected by said petition, for three successive weeks, the last of which publication shall be at least ten days prior to the date set for hearing, provided that if the territory described in said petition shall include more than one county and territory within two or more judicial districts, then the judge of said court, where said petition is filed, shall arrange with the judge or judges of such other districts for a joint hearing upon such petition, which hearing may be at such time and place, within the territory described in said petition, as said judges shall jointly specify, and the finding by the majority of said judges shall be treated as the finding of said court and at said hearing such districts shall be represented by one judge only; but the district court, in which said petition was originally filed, shall for all other purposes, except for the purpose of said joint hearing, and except as hereinafter otherwise provided, have and retain original jurisdiction; but the absence from said hearing of the judge of one or more of said districts shall not affect the judgment or decree then entered providing two or more judges are present. ('17 c. 442 § 4)

6883. Court to file findings and decree on petition for flood control district with clerk of court and secretary of state—At the time and place set for hearing on said petition, all parties interested may appear and be heard for and against the granting of said petition, but no delay shall be granted at said hearing except when necessary and as the court may order, and if upon said hearing it shall appear that the purpose of this act would be subserved by the creation of a drainage and flood control district, comprising the whole or certain portions of the territory outlined in the petition, and the court shall so determine, then said court shall immediately make and file its findings of all matters involved in said petition, and shall by order, direct and declare said district organized, designating in said order the name by which it shall thereafter be known, and upon the filing of said order with the clerk of the court, where said petition was filed, and a certified copy thereof in the office of secretary of state, said district shall be and become for all purposes of this act, a body corporate endowed with all the rights, privileges and authorities herein designated with power to sue and be sued, to incur debts and obligations and to do, and perform and exercise all the rights and privileges in this act enumerated.

Said order or decree shall designate the place where the office or principal place of business of the district shall be located which, unless special reasons arise to the contrary, shall be where the petition is filed; shall designate the number of directors or officers who shall constitute the first board of said district, who shall be

no less than three or more than five, and name and appoint such directors.

If upon said hearing the court finds that any portion of the territory named in said petition should not be included in said district the same may be excluded, but any territory not included in said petition within the forty mile limit hereinbefore defined may at said hearing or any subsequent hearing ordered by the court upon petition of twenty-five freeholders of said territory to be included be added to said district, and the boundaries thereof fixed accordingly, and if upon full hearing the court determine that the territory described in said petition or some part thereof should not be organized in said district, then said petition may be dismissed and the cost incurred be taxed against the petitioners. After an order is entered, establishing the district, the same shall be deemed final and binding upon all persons and property within said district, and the organization of said district shall not be collaterally questioned in any suit or action in any court in this state. ('17 c. 442 § 5, amended '21 c. 326 § 1)

6884. Authority of board of directors—Procedure of board—Within ten days after the filing of the order organizing said district, in the office of the secretary of state, the parties named therein as the first board of directors shall meet at the office of the clerk of the district court, where said petition was filed, each take and severally subscribe the oath provided by statute, to be taken by public officials, and shall severally file with the clerk of said court a bond in the sum of one thousand dollars (\$1,000.00), furnished by a proper surety company, the cost to be paid by the district conditioned for the faithful performance of their duties, and shall thereupon organize, by electing one of their number as president, and one of their number or a third party as secretary or clerk of said board, and shall provide the necessary books and records, and if the place designated in said order, as the general offices for said district, shall be a county seat said board shall have the authority to elect the clerk of the district court of such county as clerk of said board, and thereupon and thereafter all papers filed with said clerk shall be and constitute a filing with said board and the office of said clerk shall be the general office of said board and it shall be the duty of said clerk to keep and preserve the record of said board in his office and to do and perform such duties as shall be designated and required by said board, who shall have authority to fix his compensation. If said board shall consist of more than five members they shall elect an executive committee of three of their members consisting of the president and two other members, who shall have active charge of all work and improvements under the direction of the board.

Said board shall meet at least semi-annually and at such other times as they may designate or as occasion may require, and at all such meetings a majority of the members thereof shall constitute a quorum and a legal meetings thereof may at any time be called upon eight (8) days' notice by mail, given by the clerk or any member of the board. ('17 c. 442 § 6, amended '21 c. 326 § 2)

6885. Selection of treasurer and engineer—Said Board shall have full authority to elect or appoint a treasurer, who shall be a resident of said district and may be one of their members, who, before entering upon his duties as such, shall subscribe the oath required by statute, in the case of public officials, and shall be required to give bonds in such sum as the board shall direct, which shall be not less than the total sum that shall at any time be in his hands or

under his control belonging to said district which bond shall be by a surety company, to be approved by said board, and the duties of said treasurer shall be such as the board may from time to time designate, and among other things, it shall be his duty to receive all moneys belonging to said district and deposit the same in such bank or banks as the board shall designate, and it shall be the duty of said treasurer to require such banks to give a proper surety bond for the care and accounting for such moneys, and said treasurer shall pay out said money only on proper orders signed by the president and secretary of said board.

Said board may also employ a chief engineer and an attorney and such other engineers and attorneys or agents or assistants as may from time to time be needful and necessary and provide for their compensation, all of which expense shall be taken and treated as a part of the cost of each particular improvement. The chief engineer shall be superintendent of all the works and improvements and shall have general charge of all work pertaining to flood control within the limits of said district. ('17 c. 442 § 7)

140-22, 167+123.

6886. Terms of members of board—The members of the board of directors of said district shall hold their office, where their number does not exceed three (3), one for a period of 2 years, two for 4 years, and where their number shall consist of five (5) members, two of said board shall hold their office for the period of two years; three for the period of four years, and in all other cases where the total number is divisible by two then one-half shall be appointed for (and hold their office for two years and the other one-half for four years), and if there is an odd number then the extra member shall hold his office for four years, and thereafter all shall be appointed for four years, and the judge of the district wherein the county is located shall have authority to and shall fill vacancies that occur in said board from any cause in the counties in his district; and each member of said board shall hold his office until his successor is elected and qualified. And said board when organized shall for all purposes of this act be and constitute a commission for the purpose of carrying into effect any and all orders, judgments, decrees or directions made by the district court relative to any improvement authorized by this act, within the limits of said district. ('17 c. 442 § 8)

6887. Board of directors to cause surveys, maps, plats, etc., covering improvements in flood control district to be made—After the organization of the board of directors of any drainage and flood control district organized under the provisions of this act, said board of directors shall upon filing with them of a petition signed by not less than 25 freeholders of said district, or by the board of county commissioners of any county or council of any village or city likely to be affected by the proposed improvement therein asking for the construction of any of the improvements authorized by the provisions of this act relative to drainage or flood control of any waters or any lake, pond, marsh or body of water or river, stream or water course within said district, therein describing the nature of the proposed improvement, the extent thereof and describing the bodies of water, stream or water course proposed to be improved or reservoir or other improvement constructed and if the construction of a ditch or drain as a part of the proposed improvement a description of the starting place, the general course and terminus thereof and setting forth the reasons and necessity for such improvement and that the same will affect the public health and general welfare and said petition is accompanied by a bond signed by said petitioners, or any number of them or other parties in their be-

half in such sum as the board of directors of said district may specify conditioned for the payment of all costs and expenses in the event said petition is not granted, it shall be the duty of said board of directors of said district to cause to be made at the earliest date possible by its engineer all necessary surveys, maps, plats, profiles, and plans covering said proposed improvement and in the performance of his duties in making said surveys and report said engineer shall conform as near as practicable to the requirements of Sections 5526 and 5527 of the General Statutes of 1913 [6678, 6681], and amendments thereto, and said board of directors upon receipt of the report of their engineer shall appoint three disinterested parties residents of this state to act as viewers, who upon being notified of such appointment shall within ten days proceed to inspect and examine all lands, highways or other property likely to be affected by such improvement or that may be used or taken for the construction or maintenance thereof and make and file with the clerk of said board with said plans and specifications a detailed statement showing the benefits and damages that will result to all individuals, land and other property or corporation, public or private, from the construction of said improvement and a list of the land claimed to be benefited and damaged and the amount thereof and of all land subject to assessment for the construction and maintenance of such improvement and in the performance of their duties such viewers shall observe and comply with so far as practicable the requirements of section 5528 of the General Statutes of 1913 [6681], and amendments thereto, except as required by the provisions of this act, and if said improvement relates to any lake, body of water, stream or water course forming the boundary between this state and any other state and bordering on said district and is of such a nature as to call for, or render necessary the deepening, widening, straightening of the channel of any stream or water course forming the boundary line between this state and any other state or the dyking, and raising, lowering, or fixing the stage of water in any lake or body of water forming such boundary line rendering necessary co-operation with the drainage authorities of such adjoining state or the deepening, straightening or dyking of any stream or river flowing into or from and materially affecting such boundary waters or the use or control thereof then and in that event the board of directors of said district are hereby authorized to confer with and enter into all necessary contracts and arrangements with the governing board of drainage district or other tribunal in charge of drainage and flood control in such adjoining state or states, affected by said proposed improvement, for the purpose agreeing upon a joint plan for the making of said improvements and the nature and extent thereof, and shall have full authority, together with the representatives of said other state or states to employ one or more engineers to make a joint survey of such boundary waters and water courses and to report to said joint contracting parties all such information as they may require to enable them to determine and agree upon a joint plan for the construction of the proposed improvement and may make all necessary arrangements for all expense that will be incurred in connection with the making of said survey and report by said engineers and adoption of said joint plan. ('17 c. 442 § 9, amended '21 c. 326 § 3)

6888. Procedure of joint contracting parties—Upon the filing of the report of the engineers appointed as provided in section 9 of this act, with the commissioners or board of directors of said drainage district in this state and with the commissioners or tribunals rep-

resenting drainage in such other state, said joint contracting parties shall proceed to consider such report and to adopt such joint plan for the construction of the proposed improvement and said joint contracting parties may give notice of a hearing of the time and place for the consideration of said report and adoption of said joint plan if deemed advisable but upon the adoption of said plan said joint contracting parties shall have authority to and shall appoint three (3) disinterested parties to act as viewers, at least one of each shall be resident of each state and who shall, after taking the oath for the faithful performance of their duties, proceed together with said engineer to examine all the property affected or that is likely to be affected by the construction of the proposed improvement and shall make such report as shall be required and among other things shall give a full description of all property and corporations affected by said improvement together with a statement of benefits and damages that will result thereto; and it shall be their duty to assess the benefits and damages upon the property in the various states upon the same basis so that each will be charged and credited with their proper proportion of the benefits received and damages sustained and shall include in said report a statement of the total cost of the proposed improvement including damages and all costs and expenses and shall make such report in duplicate or triplicate as the case may require and file one copy with the representative of each state and upon the filing of said reports, said board of directors of the drainage district in this state and the representative of such other state or states shall fix a time and place in the vicinity of the proposed improvement or some part thereof convenient of access to all parties interested, for a hearing upon said report of the viewers and engineers of which hearing notice shall be given by publication for two (2) successive weeks in at least one weekly newspaper published in each county containing property affected by said improvement the last of which publication shall be at least eight (8) days prior to the date set for hearing; at which hearing the representatives of the several states shall attend in joint session and all parties interested shall be given a hearing for or against any matters contained in the report of said viewers and engineers including joint plan and benefits and damages and the said representatives of the drainage and flood control district in this state and representatives from such other state or states shall have full authority to consider and modify said report and after full hearing to adopt or reject the same; and if it shall then appear that the amount assessable against the property and corporations benefited shall be greater than the benefits received, then said petition shall be dismissed but if it shall appear that the total benefits are greater than the total sums assessable against the property and corporations benefited and that such improvement will be of great public benefit same shall be adopted; and in that event, it shall be the duty of said joint contracting parties then in session to divide the total cost of said improvement including all expenses in any manner connected therewith, among the several states in proportion to the benefits received as shown by said reports as finally adopted and the joint plans as thus adopted and the division of the total costs so assigned to the several states shall be binding upon all parties to said joint arrangement in all subsequent proceedings relating thereto and the findings and order so made by the parties to said joint arrangement shall be executed in duplicate or in triplicate as the case may require and filed with the proper representatives of the several states. ('17 c. 442 § 10)

6889. Board to petition district court for authority to construct or proceed with improvements—The board of directors of such drainage and flood control district in this state upon the filing in their office of the report required to be made by them under the provisions of section 9, where the proposed improvement relates to streams or bodies of water lying wholly within this state, or upon filing in their office where the proposed improvement relates to boundary waters or water courses, of the engineers' and viewers' report and the report and findings of said joint conference including the findings as to joint plans and division of the total cost of construction among the several states as provided in section 10, of this act, said board shall cause to be made a petition to the district court in the county where the proposed improvement or some part thereof is located, therein petitioning said court for authority to construct said improvement as shown in the original petition filed with said board or as subsequently modified by them and the finding and reports filed in their office relating to said improvement therein setting forth the necessity for such improvement and fully describing the nature and purpose thereof and setting forth the facts required to be alleged in case of petitions to the district court in judicial ditch proceedings required by the laws of this state, and the engineers' and viewers' report as to benefits and damages shall be referred to or attached and made a part of said petition and asking that a time and place be fixed by said court for a hearing upon said petition and reports and requiring all parties interested to appear and show cause why the reports accompanying said petition should not be adopted and the rights of all parties interested fixed and determined and said improvement ordered constructed in accordance with said report and said petition. Upon the filing of such petitions and such reports with the clerk of said court, he shall immediately notify the judge thereof who shall within ten days fix a time and place for hearing upon said petition and report which may be in any county most convenient for the parties interested, due notice of which shall be given by publication for two (2) weeks in one newspaper published in each county affected by the proposed improvement, which notice shall contain a description of the property affected and the names of the owners thereof as appears in the office of the county treasurer on the last assessment roll of said county together with the names of all corporations affected by such proceedings, a copy of which notice shall also be mailed by the clerk to each property owner, at least two weeks before the date set for hearing at his last known address or if not known, as shown by the records in the county treasurer's office where the property is located and requiring all parties in any manner interested to appear before said court at the time and place specified in said notice to show cause why the reports accompanying said petition should not be confirmed and the prayer of said petition granted and said improvement ordered constructed in accordance with the plans and specifications and the report of the engineer and viewers accompanying said petition. Upon the filing of said petition and reports and the publication and mailing of said notice, said court shall have full jurisdiction of all parties, corporations, property and matters named and referred to in said petition and said reports and the holders of all mortgages and liens against all lands there described. ('17 c. 442 § 11, amended '21 c. 326 § 4)

6890. Hearing on petition—At the time and place specified in the notice of hearing provided for in the last section, the judge of said court or the judge of any district court upon his request, shall appear and hear

all parties for and against the matters set forth in said petition and reports accompanying the same and shall have and may exercise all the authority at said hearing provided in sections 5531 and 5532 of the General Statutes of 1913 [6684, 6685], so far as is applicable to this act, provided, he shall have no authority to modify the order adopting the joint plan or the order dividing the total cost among the several states and, if upon full hearing it shall appear and the court shall find that the engineers' and viewers' report have been made and all their proceedings had in accordance with the provisions of this act and that the total benefits resulting from said improvement together with the total sum assessable against property not directly benefited as reported by the board of said district shall exceed the total cost of said improvement including the damages and that said improvement will be of great public benefit and utility, then the said court shall make its findings accordingly and shall by order confirm the report of the engineer and viewers as finally adopted at said hearing, and shall order the construction of said improvement accordingly and such findings and order of said court shall fix and determine the rights of all parties affected in accordance therewith subject only to the right of appeal as provided in this act. ('17 c. 442 § 12, amended '21 c. 326 § 5)

6891. Appeal to supreme court—Any parties or corporations interested or affected by the order of the court directing the construction of any improvement as provided in section 12, of this act, may within twenty (20) days from the date of said order appeal therefrom upon the grounds and upon like notice as now provided for appeals in county or judicial ditch proceedings by section 5534 of General Statutes of 1913 [6687], and the provisions of said section shall apply to and govern appeals under this act, and the board of directors of said drainage district shall have a like right of appeal and shall also have the right of appeal from the order of the court denying their petition for the construction of said improvement and any appellant in their notice of appeal may demand a hearing before another judge or before a jury and in the event of a demand for hearing before another judge the judge of said court shall provide for the trial of said appeals before another judge but no appeal shall be granted from an order granting the petition of said board and ordering the construction of said improvement, provided further, that no appeal taken on the question of benefits and damages shall delay further proceedings towards the construction of said improvement. ('17 c. 442 § 13)

6892. Assessment of lands outside of district—Whenever the board of directors of any district shall ascertain that any improvement will benefit lands outside the district they shall assess such lands for such benefit as though within the district and report such facts to the court, together with their findings and recommendation; and thereupon notice of the filing of such assessment and recommendation shall be served upon the parties interested and they shall be given the same notice of hearing upon said petition and for assessment as provided for in case all parties affected by said proceedings are within the district, and said assessments considered modified or confirmed as in other cases and at any time upon filing with the district court, where the original petition was filed, a petition by the board of directors of any district or any parties in interest outside the district asking for a change of the boundary lines of said district, either adding to or taking from said district any territory, the court shall upon the filing of said petition, cause notice thereof to be given and hearing had thereupon in the same manner, and with like effect as in the

original hearing for the formation of the district, except the notice to be published, shall be only in such counties as shall be directly affected by such change. Provided no assessments shall be levied under the provisions of this section upon lands directly benefited in excess of ten miles outside of the boundary of the district as fixed by the forty mile limitation provided for in this act. ('17 c. 442 § 14)

6893. Authority to let contracts for construction—The board of directors of any district organized under the provisions of this act shall have full authority to let contracts for the construction of and cause to be constructed any and all works of improvement, in accordance with the order of the court and the plans and specifications referred to in such order, said contract to be let only on three weeks' published notice calling for bids at such time and place as the board shall designate, and may employ and use men and equipment under the supervision of the chief engineer or other agents, of all portions of said works not let by contract, and may cause to be repaired any and all works of improvement by this act authorized to be constructed and to employ men therefor; said work to be done under the direction of the chief engineer or his assistants and the cost of all such work except those of repair shall be treated and considered as part of the construction. Provided: No money shall be expended in the construction of said work except those in the preparation of the necessary surveys and plans including the work of viewing and estimating the amount of benefits and damages or connected therewith until after a petition for such construction has been filed and the same ordered constructed as provided in this act, and in the event that the said improvement relates to boundary waters or water courses then said board of such district shall have full authority to enter into and make all necessary contracts and arrangements with the board, commission or other tribunal of any adjoining state or states interested in such improvement for the letting of the contract for such improvement and the said board together with the representatives of said other states shall have full authority to advertise and call for bids for the construction of such improvements, giving such notice of the time and place of opening bids as said parties may provide and shall have full authority to make all necessary arrangements relative to the making of said contracts, the form of the contracts and the supervision of the work and payment therefor but said contract shall provide for the completion of said work in accordance with the plans and specifications within a given time and shall require sufficient bonds to secure the performance of said contract and shall further provide that the said drainage district or authorities in this state shall not be responsible except for the furnishing of the funds provided to be furnished by this state and the completion of so much of the improvement as lies within the limits of this state and may contain like provisions relative to the rights of the authorities representing such other state or states. The board of directors of such district shall also have authority to enter into such contracts or arrangements as may be deemed advisable with the authorities of such other state or states relative to the cost of repair, improvements and upkeep of all parts of said improvement connected with such boundary waters or water courses and provide the funds therefor and also for a proper division of any income that may be realized from use of such waters. ('17 c. 442 § 15)

6894. Board given power to enter upon lands for surveys and examinations—The board of directors of any district organized under this act and their agents and employees, including contractors, may enter upon

lands within or without the district in order to make surveys and examinations to accomplish all necessary preliminary purposes, the district being liable only for any actual damage done, and any person or corporation preventing such entrance shall be guilty of a misdemeanor. ('17 c. 442 § 16)

6895. Estimated value of property in connection with the reservoir to be contained in petition—Said board shall also have the authority to condemn, for the use of the district, any land or property within said district when the same shall become necessary to protect the property of the district and to carry out the purpose of this act, and when it shall appear that in any proceedings to establish any improvement including reservoirs or holding basins or other similar improvements, that sufficient land was not acquired in said proceedings to properly handle and control the waters in said reservoir or protect adjoining property from such waters or the waters of any stream, ditch or watercourse, or when the board shall determine that it is necessary and advisable to increase the size of any lake, basin or reservoir previously established and desire further lands to properly create and utilize the same, the said board may acquire title thereto for the benefit of the district, by filing a petition with the district court of any county in said district wherein said reservoir or other improvements or some parts thereof is located, accompanied by proper plats, plans and specifications, as provided in section 11 of this act, and thereupon after hearing as therein provided for, the court may by order provide for the appropriation of such land, if it shall be shown that the same is necessary and advisable, and assess the damages resulting therefrom as in other cases providing for the construction of improvements for flood control.

In all cases where a reservoir is created, either in a natural basin or otherwise, and said board shall conclude that the creation of said reservoir will create a waterpower or establish conditions whereby waterpower can profitably be constructed in connection with said reservoir, said board either in the original petition provided for the creation of said reservoir, or at any subsequent time may petition the court, presenting maps and details therewith and ask that such additional land and other rights or privileges as may be deemed necessary be condemned and title acquired in connection with said reservoir property, to enable said board to improve the same and use the waters of said reservoir and other waters in any manner connected therewith for waterpower purposes to the end that the waters of said reservoir or holding basins together with all streams connected therewith may be utilized and produce income for the benefit of said district and to aid in the general expense thereof and in the upkeep of all drainage and flood control improvements within said district.

Said board may also include in said petition a statement giving the reasonable value of said property owned by the district in connection with said reservoir and proposed water power and a detailed estimate of the amount of water power likely to be produced by the proposed improvement and the probable income to be derived therefrom annually; and may in said petition ask the court to fix and determine the amount of bonds that the board may issue against the property of the district in connection with said reservoir together with the income therefrom and the court shall have authority to authorize said board to issue the bonds of said district in such sum as such improvement may require not to exceed 60% of the reasonable value of the proposed water power and not to exceed such sum as the income from said water power may reasonably be expected to pay the interest on; and

upon the making of said order the board of directors are hereby authorized to issue the bonds of said district not to exceed such sum as specified in the order of the court in such denomination and in such form as the board may determine, payable in not less than 10 or not more than 20 years from date with interest not to exceed 6% per annum payable annually, which bonds shall be signed by the clerk and president of said board and registered in the same manner as county bonds under the laws of this state and upon the issuance of said bonds it shall be the duty of said board to create an interest fund and provide for the accumulation of the necessary sum to pay the interest on said bonds promptly when due.

If, at the time of the filing of the petition for the establishment of any reservoir or holding basin or at any time thereafter it shall appear that the waters of such reservoir or holding basin can be utilized for the purpose of irrigation or for any other purpose and the board of such district shall, after examination, so determine, it may cause to be made all necessary plats, plans and specifications and upon filing the same, together with a petition with the clerk of the district court of any county affected and by such proposed improvements or use, a hearing shall be had thereon upon like notice, as provided in section 11 of this act, at which hearing the court, after due consideration of the showing made, shall have authority to make such order as may be necessary to authorize said board to acquire title to all necessary rights of way, ditches or property to enable it to utilize waters of any such reservoir for irrigation purposes and to hold, keep and control the same and all property so acquired in any such proceeding shall be and become the property of said district. ('17 c. 442 § 17)

6896. To enter into contracts with United States government—The board of directors shall also have the right and authority to enter into contracts or other arrangements with the United States Government or any department thereof, with persons, railroads or other corporations, with public corporations, and state government of this or other states, with drainage, flood control, conservation, conservancy, or other improvement districts, in this or other states, for co-operation or assistance in constructing, maintaining, using and operating the works of the district or the waters thereof, or for making surveys and investigations or reports thereon; and may purchase, lease or acquire land in other property in adjoining states in order to secure outlets to construct and maintain dykes or dams, or for other purposes of this act, and may let contracts or spend money for securing such outlets or other works in adjoining states. Provided, that no board of directors of any drainage district organized under the provisions of this act shall have the right, power, or authority to connect by artificial means boundary waters having different natural outlets so that the waters of one may be discharged into the other. Provided that nothing herein contained shall interfere with any action by the Congress of the United States. ('17 c. 442 § 18)

6897. Rights of various parties to waters in flood control districts—The rights of land owners, municipalities, corporations, and other users of water to the waters of the district for domestic use, water supply, industrial purposes, for water power, or for any other purposes shall extend only to such rights as were owned by them prior to the organization of the district. Wherever the organization of, or the improvements made by the district make possible a greater, better or more convenient use of, or benefit from, the waters of the district for any purpose, the right of such greater, better, or more convenient use of, or benefit

from, such waters shall be the property of the district; and such rights may be leased, or assigned by the district in return for reasonable compensation; but the appraisal of benefits made by the board or any appraisers in any proceeding for the establishment of any improvement under the provisions of this act shall not be construed to in any manner include benefits for such greater, better or more convenient use of or benefit from the waters of the district, unless so specified in the petition or report of the board, but the compensation for such benefits shall be made in accordance with the provisions of this section except as hereinafter provided.

Persons, corporations, municipalities, or other parties desiring to secure such use of the waters or water courses of the district or of the district rights therein, may make application to the board of directors for lease or permission for such use. Such application shall state the purpose and character of such use, the period and degree of continuity and of the amount of water desired. In case any party makes greater, better or more convenient use of the waters of the district without formal application the fact of such use shall serve all purposes of an application, and the board may proceed to determine a reasonable rate of compensation the same as though formal application had been made. Where it is not possible nor reasonable to grant all applications, preference shall be given to the greatest need and to the most reasonable use, as may be determined by the board of directors, subject to the approval of the court. Preference shall be given, first to domestic and municipal water supply, and no charge shall be made for the use of water taken by private persons for home and farm yard use, or for watering stock.

The board of directors shall not permanently sell, lease, assign or grant any permit or otherwise part with permanent control by the district of the use of the waters thereof and the rates for light, power or other services charged by vendees, assignees, lessees or licensees of such district, but such leases, assignments or permits of any kind or other contracts for the use of water shall be entered into only after a report has been made by the board of such district to the court setting forth the terms and conditions of said lease, permit or other contract and corporations claiming under such district, the excess of the cost of improvements made pursuant to this act and damages therefrom, over the benefits to lands affected. ('17 c. 442 § 19)

FINANCIAL PROVISIONS.

6898. Financial provisions—The moneys of any drainage and flood control district organized under the provisions of this act shall consist of three (3) separate funds:

1. A preliminary fund, which shall consist of funds to be provided as hereinafter specified, and can be used for preliminary work and general expenses.

2. A bond fund, which is the proceeds of bonds issued by said district, as herein provided, upon property of the district that is producing or likely to produce a regular income and to be used for the payments of the purchase price of said property of the value thereof, fixed by the court in proceeding, as herein provided, and for the improvement and development of such property.

3. A maintenance fund, which shall be supplied by special assessments to be levied from time to time as occasion may require to supply funds for the upkeep of the property and improvement of the districts including the reservoirs, ditches, dykes, canals and other

improvements, together with the expenses incident to, and connected therewith. ('17 c. 442 § 20)

6899. **Payment of expenses**—After the filing of a petition under this act for the formation of a district, and the furnishing and filing of the bond, as provided in section 2 of this act, the costs of publication and other official costs of such proceedings shall be paid out of the general funds of the county in which the petition is pending. Such payment shall be made on the warrant of the auditor, on the order of the court, which order shall be made upon application of the district board upon ten (10) days' notice to the county auditor of such county. In case the district is organized, such costs shall be repaid to the county out of the first funds received by the district, through the levying of taxes or assessments or selling of bonds, or the borrowing of money. If the district is not organized, then the costs shall be collected from the petitioners or their bondsmen; upon organization of the district the court shall make an order, upon application of the board upon ten (10) days' notice to the county auditors of the several counties affected, dividing the preliminary expenses between the counties included in the district in proportion to the interests of the various counties as may be estimated by the court; and the court shall issue an order to the auditor of each county to issue his warrant upon the treasurer, for the proportion of the preliminary expenses assigned to that county by order of the court.

As soon as the district shall have been organized under the provisions of this act, and a board of directors shall have been appointed and qualified, said board may petition the district court in the county where said original petition was filed, upon ten (10) days' notice in writing to the county auditors of each county affected, asking that an order be made creating a preliminary fund for said district, which shall be of a size in proportion to the size of said district, and in the event said district shall include a number of counties, said funds shall not exceed the sum of \$10,000 and may be of such less amount as the court may order, and the court upon said hearing, may designate the amount of said funds and fix the proportionate amount that each county affected by said district shall pay in proportion to the area within said district, and thereupon the court shall order each of said several counties to advance from its general fund, the sum there named to constitute a preliminary fund for said district, and thereupon the auditors of said several counties shall draw their warrant upon the treasury of their county for the payment of the amount specified in the court's order payable to the treasurer of said district, and the sum so advanced by each county shall be charged to said district and shall be repaid to each of said several counties as soon as said district has funds for that purpose, and the funds so provided shall be used by the board of said district for preliminary work, and when said board shall incur expense for surveys or other preliminary work on any proposed improvement, all expenses, including time, salaries or otherwise connected with such work, shall be kept track of and figured in as the cost of construction in any such proposed improvement, and upon said improvement being ordered by the court and funds being provided for the construction thereof, as hereinafter specified, all sums advanced out of said preliminary funds shall be repaid and said funds replaced for further similar use on other improvements. ('17 c. 442 § 21, amended '21 c. 326 § 6)

6900. **Court to apportion amount of total costs**—That immediately or at the earliest practicable date following the letting of a contract, or contracts, for the construction of any improvement by the board of

directors of said district, they shall cause to be made and filed with the clerk of the district court where said proceedings are pending a statement of all expenses incurred in the construction of said improvement, including the amount for which the contract for the construction of said improvement was let; an estimate of the cost of supervision, fees and all other ascertainable expenses in connection therewith, and at the time of filing such statement, or as soon thereafter as practical, upon ten days' notice in writing given by the board to the auditors of the several counties affected by such improvement, the court shall apportion the amount of the total costs of the construction of said improvements among the several counties affected in proportion to the benefits received and shall fix and determine the amount to be paid by the property and corporations benefited in each county, and upon similar notice to said county auditors, said judge of the district court may at any time modify said order as justice may require, or make additional orders covering additional expense. The word "expense" as used in this section shall be construed to mean every item of cost of said improvement from its inception to its completion and all fees and expenses paid or incurred, including all damages awarded, and upon the filing of said order with the clerk of the court where said proceedings are pending, it shall be the duty of said clerk to make and file a certified copy of said order with the auditors of the respective counties affected, together with a certified copy of the order confirming the report of the board of viewers and the engineer and directing the construction of said improvement and a list of all property affected in each county respectively and a statement of all benefits and damages affecting the same, and such other information as the court by order may direct, and upon the filing of such order, it shall be the duty of the county board of each of said counties to provide the necessary funds to meet the proportionate share of the cost of said improvement, allotted to the county by said order in the same manner as now provided by sections 5533 and 5542 of the General Statutes of 1913 [6686 and 6696] and amendments thereto, in the case of judicial ditch proceedings, and upon the filing of the certified copies of said orders with said county auditors it shall be the duty of said auditors of the respective counties to make and file in his office a summary statement as provided in section 5543 of the General Statutes of 1913 [6703], containing the assessments against the property and corporations benefited and the property subject to assessment within his county, showing the amount to be paid by such property and corporations in said county, as specified in said order, and shall, in accordance with the provisions of section 5544 of the General Statutes of 1913 [6705] make and file in the office of the register of deeds of said county such statement and lien against the property and corporations affected. And it shall be the duty of the county board of said several counties to provide the funds to meet the proportionate share of the total cost of said improvement, as shown by the order of the court and they are hereby authorized to exercise all rights and authority in so doing, now granted to county boards or boards of county commissioners under the provisions of section 5542, of the General Statutes of 1913 [6696], and other provisions of the General Statutes, relating to county and judicial ditch proceedings, and the said board of county commissioners and the said county auditor and county treasurer and register of deeds are hereby authorized and directed to exercise the authority and perform the several duties assigned to such officials or any of them under the provisions of sections 5544, 5546, 5548 and 5551 of the General

Statutes of 1913 [6705, 6712, 6713 and 6716], and amendments thereto, relative to the establishment of liens, and the assessment and collection by installments of all sums levied against property within their respective counties for benefits resulting from the construction of said improvements and to exercise such other authority and perform such other duties relative to the establishment of liens, filing of statements or additional statements and liens as now provided by the laws of this state relating to county and judicial ditches, and the county board is authorized to make the necessary order specifying the period and times of payment of said assessment and the rate of interest. And all moneys received by the county treasurer of any county from the sale of bonds, assessment or otherwise for the benefit of the district shall be by the treasurer of each county accounted for and paid over to the treasurer of said district, and it shall be the duty of the board of said district to pay all damages before entering upon the land, except in case of appeal. ('17 c. 442, § 22, amended '21 c. 326 § 7)

6901. Assessments to be split by county auditor— Upon the filing by the board of directors of a drainage and flood control district, with the county auditor of any county, of a statement, as provided in section 22 of this act, giving a list of the property and corporations benefited or damaged or otherwise affected by any proposed improvement, it shall be the duty of the county auditor to assess the amount specified in such list against the municipalities or other corporations, as therein specified, in accordance with the provisions of section 5551 of the General Statutes of 1913 [6716] and amendments thereto; and said county auditors respectively shall proceed to levy and collect the sums specified in said list against the several corporations in accordance with the provisions of said section, and in the event that any improvement reported in said list shall be for improvements or benefits to any county or state road, then, in that event, the sum so reported shall become a direct charge against said county and may be paid by said county out of its road and bridge fund or otherwise, as its board of county commissioners may direct, and may be paid in whole or in installments, as may be specified by the board of county commissioners of each county. Provided, that no assessment shall be levied against any property or corporation benefited under the provisions of this act in excess of the amount of benefit received, as fixed by the order of court directing the construction of said improvement, or as subsequently determined on appeal. ('17 c. 442 § 23, amended '21 c. 326 § 8)

6902. Directors authorized to issue orders for payment of contracts—The board of directors of any drainage and flood control district is hereby authorized to issue the orders of said district on payment for any contract for the construction of any improvement, and also for all ordinary general expenses, and for all expenses incurred by contract or otherwise in making reports and when sufficient funds are not available to pay the same, said order shall after presentation to the treasurer of the district, draw interest at the rate of 6% per annum until paid or until notice shall be given by the district that such funds are available. ('17 c. 442 § 24)

6903. Directors authorized to levy such sums as court may direct for upkeep and repairs—The board of directors of any drainage and flood control district, organized under this act, are hereby authorized after the construction of any improvement, to levy from time to time as occasion may require upon the land benefited by such improvement, such sum as the court may order or direct upon application by the board, for the purpose of providing funds for the upkeep and re-

pairs of such improvement, and upon filing a copy of said order and levy with the county auditor of each county affected by said improvement accompanied by a list of the property within the limits of said county affected by said levy it shall be the duty of said county auditor to extend said levy against said property within the limits of his county as provided in other cases for the levy, assessment and collection of taxes ordered, levied and collected by the board of county commissioners in ditch proceedings, and upon like application the board of directors of any drainage and flood control district are hereby authorized to levy upon the property of the district such sum as the court may authorize and direct to cover the general expenses of the board, not to exceed, however, in any one district the sum of five thousand (\$5,000) dollars, and the court shall by such order, apportion the amount of such levy among the several counties, according to the area or valuations of the portion of each county within said district, and upon the filing of a copy of said order, showing the amount to be levied upon the property of said district, within the limits of each county, the auditor of such county shall levy the same upon that portion of the property of said county within the limits of said district in the same manner and with like effect as in the levy of other taxes by municipal corporations in this state; and all sums collected and received by the county treasurer of such county shall be accounted for to the treasurer of said drainage and flood control district; and the same shall be placed in the fund as provided in this act and used for the purposes for which said assessment was made. ('17 c. 442 § 25)

6904. Directors to have charge and control of public waters in district—The board of directors of all drainage and flood control districts shall have charge and control of the public waters of said district and especially all bodies of water used as reservoirs and streams flowing into and from the same, and may cause said reservoirs, when deemed practicable, to be stocked with fish and shall have full charge and control of all fish caught in said waters for sale or other commercial purposes, and shall have the sole right and authority to make all contracts or issue all licenses therefor, and in all cases such contracts shall provide for the payment of the reasonable value of such fish into the treasury of said district and said district shall receive all benefits and income therefrom, but said board shall have no authority to authorize the catching of any game fish for commercial purposes or to grant any authority relative to fishing in violation of the laws of this state nor interfere with private individuals fishing with hook and line or in such other manner as the laws of this state shall provide during the seasons when such fishing is permitted. ('17 c. 442 § 26)

6905. Definition of terms—Whenever the term "person" is used in this act and not otherwise specified, it shall be taken to mean and include person, firm, co-partnership, association or corporation, other than public or political subdivision, and whenever the term "public corporation" or "municipal corporation" shall be used, the same shall be taken to mean counties, townships, school districts, road districts, or other political divisions or subdivisions.

Whenever the term "court" is used it shall be taken to mean the district court or the judge thereof, and to apply to the district court wherein the petition for the organization of the district was filed and granted unless otherwise specified.

Whenever the term "Board" or "Board of Directors" or "Commissioners" is used in this act and not otherwise specified, it shall be construed to mean the board

of managers of the drainage district in this state in charge of the improvement; and whenever the term "joint contracting parties" is used, it shall be construed to mean the parties representing the board of directors of the drainage district or districts in his state in charge of the improvement and the board, commission or authorities representing such other state or states. ('17 c. 442 § 27)

6906. Classification of lands for assessment purposes—In all proceedings by the board of directors under the provisions of this act to assess benefits to any land resulting from any improvements said board shall as near as practicable divide said lands for the purpose of assessments into three (3) classes:

In Class No. 1, shall include all lands or corporations receiving direct benefits such as drainage or protection from overflow by flood control improvements.

In Class No. 2, shall include all lands or corporations to which are furnished a drainage outlet by the construction or improvement of any artificial or natural drain or watercourse.

In Class No. 3, shall include all lands that are now receiving or that need drainage and that are furnishing waters that will be handled or controlled by the proposed improvement.

Class 1 and 2, shall be treated as a direct assessment.

Class No. 3, may be treated as a secondary assessment to aid in the control of the waters furnished by said lands and all lands within or without the limits of said district falling within the classes 1 and 2 are hereby declared assessable for the construction of such improvement under the provisions of this act as lands directly benefited and all lands falling within the provisions designated as Class 3, are hereby declared assessable as lands receiving benefits from the general plan of drainage and flood control provided for by this act and assessable. ('17 c. 442 § 28)

6907. Directors given authority to co-operate with board of adjoining districts—The board of directors of any drainage and flood control district organized under this act shall have authority to enter into all necessary contracts to enable them to co-operate with the managing board of any adjoining district whether organized under this act or any other act authorized by the laws of this state relative to any matters connected with drainage or flood control or other matters connected with or relating to the management of affairs connected with said district, and in the event that the formation of districts should be authorized by any other law of this state, enacted prior or subsequent to this act for the purpose of having charge of drainage and flood control matters and any such district should be formed bordering upon streams or bodies of water forming the boundary of this state, the governing board of such district shall have and may exercise all the authority granted by this act. ('17 c. 442 § 29)

(See Ex. Sess. '19 c. 13 § 20, as amended '21 c. 325 § 7)

6908. Board to make annual report to court—At least once a year or oftener, if the court shall so order, the board of directors shall make a report to the court of its proceedings and an accounting of its receipts and disbursements to that date, which shall be filed with the clerk of said court, and it shall be the duty of said board from time to time to make such report as may be demanded by the public examiner, and it shall be the duty of the public examiner of this state to check up and report to the court not less than once a year and at such time as the court may direct, the financial condition of said district. ('17 c. 442 § 30)

(See Ex. Sess. '19 c. 13 § 20, as amended '21 c. 325 § 7)

6909. Court not to lose jurisdiction by reason of failure to give notice—In any and every case where a

notice is provided for in this act, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void; but the court shall in that case order due notice to be given, and shall continue the hearing until such time as such notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

In case any individual appraisal or appraisals, assessment or assessments, or levy or levies, shall be held void for want of legal notice, or in case the board may determine that any notice with reference to any land or lands may be faulty, then the board may file a motion in the original cause asking that the court order notice to the owner of such land or lands given and set a time for hearing, as provided in this act. And in case the original notice as a whole was sufficient, and was faulty only with reference to publication as to certain tracts, only the owners of and persons interested in those particular tracts need be notified by subsequent notice. And if the publication of any notice in any county was defective or not made in time, republication of the defective notice need be had only in the county in which the defect occurred. ('17 c. 442 § 31)

(See Ex. Sess. '19 c. 13 § 20, as amended '21 c. 325 § 7)

6910. Act to be liberally construed—This act being necessary for securing the public health, safety, convenience, or welfare, and being necessary for its prevention of great loss of life and for the security of public and private property from floods and other uncontrolled waters, it shall be liberally construed to effect the control and conservation and drainage of the waters of this state. ('17 c. 442 § 32)

(See Ex. Sess. '19 c. 13 § 20, as amended '21 c. 325 § 7)

6911. In case any section is declared unconstitutional, remainder to be unaffected—In case any section or sections or parts of any sections of this act shall be found to be unconstitutional, the remainder of the act shall not thereby be invalidated, but shall remain in full force and effect. ('17 c. 442 § 33)

6912. Other laws to apply—In all cases where reference is made in this act to sections of the General Statutes of 1913 or to other drainage laws of this state and sections thereof are referred to, such sections and provisions shall, so far as applicable, be treated and construed as having the same force and effect, so far as the provisions of this act are concerned, as though herein set forth. ('17 c. 442 § 33, amended '21 c. 326 § 9)

CURATIVE AND MISCELLANEOUS PROVISIONS

6913. Proceedings to be followed for improvement and second assessment—Whenever there has heretofore been filed with the county auditor or clerk of court, as the case may be, a petition and bond for the establishment of a public drainage ditch and where the requirements of the drainage laws of this state with reference to the establishment and construction of drainage ditches have been complied with and a ditch has been established by the court or county board in accordance with said petition and the assessments for damages and benefits to the land affected have been made and confirmed or where in addition to the foregoing said ditch has actually been constructed, on the assumption that such ditch should end at the terminus or outlet named in the petition, or in the order establishing the same, and where it is found that in order to make such ditch effectual to drain the land sought to be drained thereby or where it is found that such ditch, as constructed, was not constructed to a proper and adequate outlet, or that such ditch carries and

deposits water upon lands lying at, near or below the terminus thereof, without providing adequate facilities for its escape therefrom and where no damage or adequate damages have been awarded on account thereof and it will be necessary to extend such ditch beyond the outlet named in the petition and the order establishing the same to a point beyond such designated outlet which may be within or outside the boundary of such county and state, then the court or county board, as the case may be, may employ an engineer and appoint viewers and proceed to ascertain the cost of the extension of such ditch to the point of outlet necessary to make said ditch effectual to drain the lands sought to be drained, and to extend such ditch so as to provide a proper and adequate outlet thereto and prevent the water carried therein from being deposited on lands lying at, near or below the terminus of said ditch, as fixed in the petition or order establishing the same without having adequate facilities for the escape therefrom, and when such cost is so ascertained said court or board may make a second assessment to cover such cost on the same lands and in the same proportion as the first assessment for such ditch or such equitable assessment upon lands affected thereby as may under all of the circumstances be just and proper and the moneys arising from said second assessment shall be used exclusively to defray the expenses of such extension to such new outlet. The proceedings herein provided for may be initiated by petition signed by one or more land owners whose lands were affected by said original ditch or whose lands are liable to be affected by or assessed for the extension. In the doing of such work by said court or boards it shall be governed by all the provisions, so far as applicable, of section 5552 of the General Statutes of Minnesota for the year 1913 [6717], as amended by section 300 of the General Laws of Minnesota for 1915, and other provisions of law applicable thereto.

Any employment of an assistant or consulting engineer to assist the drainage engineer in any ditch proceeding and any payment heretofore made to such assistant or consulting engineer by the county board or on the order of any district judge are hereby legalized and confirmed. ('07 c. 371, amended '17 c. 441 § 18) [5672]

Historical—"An act amending chapter 145 of the General Laws of 1905," etc. 1905 c. 145 is superseded by the section above set forth. See 1905 c. 84. Broad powers conferred (143-438, 174-314).

6913-A. Additional assessments in case of insufficiency to cover cost of construction made by first assessment—Whenever any ditch or drain has been or shall be ordered by the county board of any county or the district court and thereafter it shall appear that the amount of the assessment of benefits made in the final order of such board or court shall be insufficient to cover the cost of the construction of such ditch or drain and the damages allowed and the other outlay made necessary thereby, but where the costs, damages and outlay are less than the amount originally found by the viewers as benefits, then on petition to such board or court by anyone interested, to have the former final order vacated as to all assessments of benefits and allowances of damages and a new final order as to such benefits and damages made and entered, such board or court shall make an order directing that such petition be heard at a time and place therein specified. The same notice shall be given as was required to be given upon the final hearing in the proceeding in which said final order was made, excepting that the notice shall also specify that the former final order as to all assessments and damages may be vacated upon such hearing. Upon such hearing the board or court shall hear and consider the matter as to as-

sessments of benefits and damages de novo and may make reference to the same or other viewers and may make such new order as to benefits and damages as shall be proper, with the right of appeal and demand of jury trial as in other cases of final order in such proceedings determining assessments of benefits or damages. Such new order shall have the effect to vacate any appeals or demands for jury trials, taken from such former final order. The board or court may in its discretion allow appellant in any appeal or demandant for a jury trial under the former final order, such sum, if any, as may be just to compensate for expenses incurred subsequent to the taking of such appeal or making of such demand, and such allowance shall be made in the new final order, but the allowances made to appellants or demandants from the former final order who shall appeal or demand jury trial under the new final order shall become void upon the making of a new appeal or new demand. Provided, that in the event more than nine months have elapsed since the order establishing any ditch was made and the contract for the construction thereof has not been let, then upon the written application of not less than seventy-five per cent of the then owners of lands assessed for benefits for the construction of such ditch under this law, such ditch may be vacated by the county board or court on payment by such applicants of all costs and expenses, and thereupon any such ditch proceeding shall be dismissed. ('17 c. 441 § 19)

6913-B. Errors—Whenever in any county or judicial ditch proceedings conducted under chapter 230, Laws of 1905, and acts amendatory thereof and supplementary thereto, it shall appear that said ditch has been regularly established and the contract let and tabular statement made and filed and the bonds issued and sold as provided in said chapter, and said contract wholly completed, and that by reason of an error on the part of the engineer in computing the yardage or other work pertaining to said ditch, or by reason of unforeseen obstacles having arisen after the letting of the contract thereby increasing the total cost of said ditch; or where for any other reason it shall appear when said ditch is completed, that the total amount of the tabular statement filed and the amount of bonds issued is less than the total cost of said ditch and that the total amount of benefits as returned by the viewers and shown by the records in said proceedings exceeds the amount of the tabular statement filed and bonds issued and such facts are made to appear to the county board by report of the county auditor or otherwise, the county board is hereby authorized by resolution made and entered, to direct the county auditor to issue notice to the parties interested in said ditch proceedings and serve the same by publication at least two weeks and by mailing notice to the last known address of all parties interested as shown by the records in said proceedings, requiring all such parties to show cause before said county board why an order should not be made directing the county auditor to file another tabular statement assessing against the property affected by said proceedings in the same proportion as the original assessment, the total cost of said ditch in excess of the total amount of the tabular statement previously filed, not to exceed, however, the total amount of benefits as shown by the viewers' report and upon said hearing said county board is hereby authorized to cause to be made and entered an order directing the county auditor to make and file an additional tabular statement in form as provided in section 6543, General Statutes 1913 [], covering the deficiency between the amount of the previous tabular statement filed and the total cost of said ditch and assess the same against the lands benefited in the

same proportion as the original summary statement filed, and the said county board is further hereby authorized, when the amount so levied shall exceed the sum of five thousand (\$5,000) dollars, to issue and sell bonds of said county as provided in section 5542, General Statutes 1913 [6696], to include the whole or such portion of the amount as they may direct, covered by said additional tabular statement so filed; and the said tabular statement so filed as herein provided, shall constitute a first lien against the property as provided in section 5543, General Statutes 1913 [6703], except only as to previous statement filed; and it shall be the duty of the said county auditor to cause said statement to be recorded as provided in section 5544, General Statutes 1913 [6705]; and the provisions of sections 5546, 5548, General Statutes 1913 [6712, 6713], shall apply to and govern the acts and duties of the several officials in the collection of the assessment so levied. Provided, however, that this section shall not apply in any case where the matter in issue has already been determined by the court. ('19 c. 471 § 15)

6914. Reassessment for increased cost—That in any county when a ditch has been established under the provisions of chapter 230, Laws 1905, and tabular lists and statements have been made, filed and recorded, as provided by sections 19 [6703] and 20 [6705] of said act, which have not included the increased cost of such ditch, caused by a modification of the plans and specifications by the engineer as the work has proceeded, or where a part of the cost of such ditch was erroneously assessed against the right of way or other land owned by a railroad company, which was exempt by law from such assessment, the amount of such increased cost arising from such modification of plans when the same does not exceed two per centum of the total original cost of such ditch, or the part of the original cost so erroneously assessed against railroad property may be assessed against the property which was properly subjected to the assessment for such ditch, and the board of county commissioners of any county in which such ditch has been established are hereby authorized to determine what proportion of such assessment each piece, parcel or tract of land affected shall bear, and to assess the same against such lands, according to the same rules which governed the first assessment. ('07 c. 246 § 1) [5673]

6915. Duties of engineer—The engineer in charge of the construction of any such ditch and who, as the work has proceeded, has modified the plans and specifications of the same, whereby changes have been made which have increased the total cost of such ditch, shall ascertain the correct amount of such cost and shall forthwith make and file with the county auditor a detailed and verified report of the same. ('07 c. 246 § 2) [5674]

6916. Meeting of county board—Notice—Upon the filing of such engineer's report with him, or upon his own ascertainment of the fact that any part of the original cost of the ditch was assessed against exempt railroad property, the county auditor shall forthwith call a special meeting of the board of county commissioners, by giving to each member thereof not less than fifteen days' written notice, and shall also cause a notice of the same and place of such special meeting to be given to all persons interested, by publication, for one week prior thereto, in a newspaper printed and published in said county, and by posting, at least one week before such meeting, printed copies thereof in three public places in each township where such ditch is located, which notice shall state the object and purpose of such meeting, and in addition thereto said auditor shall mail a notice of said meeting to all persons interested whose address is known to him or can

be ascertained by inquiring at the treasurer's office. ('07 c. 246 § 3) [5675]

6917. Hearing—The board of county commissioners at said special meeting, being satisfied that the notice thereof has been given as provided in section 3 [6916] of this act, shall (or at any time to which they may adjourn from time to time, as necessity may require, but not otherwise) proceed to hear and consider the matter, and all persons interested may appear and be heard by and before them. ('07 c. 246 § 4) [5676]

6918. Order for assessment—If from the engineer's report and such other evidence as may be adduced before them, the board shall find that by a modification of the plans and specifications the total cost of the ditch has been increased by not more than two per centum of the total original contract price for the construction thereof, or that any part of the original cost was erroneously assessed against exempt railroad property, they shall, by order, determine the proportionate part thereof which shall be assessed against each piece, parcel or tract of unexempt land affected. ('07 c. 246 § 5) [5677]

6919. Duty of auditor—Lien—The board having made its order reassessing said lands, it shall be the duty of the county auditor forthwith to make out, file and have recorded, a tabular list and statement, as provided in sections 19 [6703] and 20 [6705], chapter 230, Laws 1905, and the amount assessed against each piece, parcel or tract of land, as stated in such list and statement, shall be a lien thereon from the time of the record of such statement in the office of the register of deeds until collected and fully paid, as provided in said chapter 230, Laws 1905. ('07 c. 246 § 6) [5678]

6920. Fees—Statement filed—The fees of the register of deeds for recording such supplemental list and statement shall be paid by the county, on the allowance of the board of county commissioners, and said statement, after the same has been recorded, shall be returned to the auditor to be by him placed with other papers relating to such ditch, and carefully preserved by him. ('07 c. 246 § 7) [5679]

6921. Appeal—Any person or corporation aggrieved thereby may appeal from the order of the board of county commissioners, made with reference to such reassessment, for the same reasons and in the manner prescribed in section 12, Laws 1905 [5534]. ('07 c. 246 § 8) [5680]

6922. Repair and maintenance of certain districts—That in all counties in this state which now have or may hereafter have two, hundred and ninety-two thousand inhabitants, or more, according to the last state census, where a judicial ditch, as defined by section 2610, chapter 44 of the Revised Laws of Minnesota 1905, has been constructed along a creek or watercourse and where such creek or watercourse flows into a navigable lake, lying wholly or in part within such county, the board of county commissioners thereof shall pay for the repair and maintenance of said ditch or watercourse out of the lake improvement fund and shall not assess the expense thereof upon the adjoining lands. ('07 c. 75) [5681]

R. L. c. 44 was repealed by 1909 c. 469 § 14.

6923. Drainage proceedings legalized—Where the county board of any county of this state, or the judge of any of the district courts of this state, in pursuance of chapter 230 of the Laws of 1905 and the acts amendatory thereof or supplemental thereto, has located and established, or attempted to locate and establish, any ditch, drain or watercourse, wholly within any county of this state, or partly within two or more counties thereof, and it has been determined by resolution adopted by said board, or order made by said judge,

that said drain, ditch or watercourse will be of public utility and promotive of or conducive to the public health, and that the benefits, or estimated benefits, to be derived from the construction thereof, are greater than the total cost, including damages awarded, and such drain or watercourse has been actually constructed in accordance with the plans and specifications filed by the engineer therein, or of the contract made in accordance with such plans or specifications, or the county has, or the counties have, entered into a contract or contracts for the construction thereof, and the county auditor has, or the county auditors, as the case may be, or any of them, have executed and filed in the office of the register of deeds, the tabular statement provided for in said act, making assessments for the cost of the location, establishment and construction of the same, within such county, against the lands, corporations and roads benefited thereby, and the time for appeals has expired and no appeals have been taken therefrom, or from any such proceeding, or if such appeals have been taken, that the same have been determined before the passage of this act, then the said proceedings, and all assessments or liens so levied or attempted to be assessed or levied for the actual cost of such work, including damages awarded, and the county bonds, if any, which have been sold and issued, to defray the expense incurred in connection therewith, or that may have been contracted to be sold and have been executed but not delivered to the purchaser to defray the expense incurred in connection therewith, are hereby legalized and declared to be valid and of full force and effect until paid, as provided in said act and amendments thereto. ('23 c. 69 § 1)

6924. Not to affect right of appeal—This act shall not apply to or affect the right of appeals from such proceedings, as now provided by law, or any actions or appeals now pending, in which the validity of such proceedings, or the sale of such bonds shall be called in question. ('23 c. 69 § 2)

6925. Construction and maintenance of bridges—That in all cases where a public drainage ditch has been, or shall hereafter be constructed wholly or partly along a boundary line between towns or counties and the excavated material, or a portion thereof, has been, or shall hereafter be deposited on the said boundary line or within two rods on either side thereof, the cost of construction and maintenance of all bridges heretofore or hereafter constructed across any such ditch, along said boundary line shall be paid for and borne equally by the town and county wherein said bridges are or shall be constructed and the town and county adjoining said boundary line. ('17 c. 441 § 20)

6926. Proceedings heretofore commenced to be completed under provisions of then existing law—In all cases where a petition has been filed and proceedings have been instituted thereunder for the establishment of any drainage improvement under any drainage law of this state prior to the passage of this act, said proceedings may be completed under the provisions of law existing prior to the passage of this act, and the provisions of such law shall continue for all purposes of completing such unfinished proceedings notwithstanding the amendments provided for in this act. ('17 c. 441 § 21)

The following curative acts have not been included in the text:

'05 c. 157 legalizes proceedings under General Laws 1901 c. 258.

'05 c. 180 legalizes proceedings under Laws 1901 c. 258.

'05 c. 247 legalizes proceedings under General Laws 1901 c. 258.

'07 c. 9, legalizes proceedings under Laws 1905 c. 230.

'07 c. 72, legalizes proceedings under Laws 1901 c. 258, Laws 1905, c. 230.

'07 c. 363, saves contracts let prior to April 18, 1905.

'09 c. 10 legalizes proceedings under Laws 1905 c. 230 and Laws 1907 c. 448.

'09 c. 83, legalizes proceedings under Laws 1905 c. 230 as amended and Laws 1907 c. 448.

'09 c. 257, legalizes proceedings under laws 1907 c. 191.

'09 c. 442 validates payment of auditor's fees under Laws 1905 c. 230.

'09 c. 469, legalizes and validates all proceedings, contracts, assessments, bonds, liens, etc., against faulty description and designation of course of the ditch.

'11 c. 291, legalizes proceedings under Laws 1909 c.127.

'11 c. 384, amended '13 c. 335, legalizes proceedings under Laws 1901 c. 258 and Laws 1905, c. 230.

'13 c. 2, legalizes proceedings under Laws 1905 c. 230.

'13 c. 463, legalizes proceedings under Laws 1905 c. 230.

'15 c. 6, legalizes and validates all proceedings, assessments, liens, levies and damage awards where the time for appeal has expired.

'15 c. 42 legalizes and validates all matters relating to drainage projects constructed under Laws of 1905 c. 230, where such ditch runs into two or more counties and the total cost exceeds \$500,000.00.

'15 c. 74, legalizes and validates drainage projects where the costs as estimated by the engineer in his report duly filed exceed \$500,000.00 and where the actual construction has deviated from that designated in the original report of the engineer.

'15 c. 216, legalizes and validates proceedings under Laws 1905 c. 230, where the time for appeal has expired prior to the passage of the act.

'15 c. 224, legalizes and validates all proceedings and assessments where regular in all respects except that the caption and notices were published in only one of the two counties through which the drainage project was established.

'15 c. 274 validates bonds issued under Laws 1907 c. 448, where the contract for construction has been entered into notwithstanding repeal of such chapter.

'17 c. 64, legalizes and validates the issue and sale of bonds made for repairs of drainage ditches.

'17 c. 163, legalizes and validates drainage projects under Laws 1905 c. 230.

'17 c. 269, authorizes payment to ditch contractor pursuant to Laws 1905 c. 230, for extra work on ditches constructed in counties of not less than fifty nor more than sixty congressional townships. (See 144-241, 175+118; 151-442, 187-413).

'17 c. 369, legalizes and validates assessments where amounts have been omitted by the county auditor from the original assessment.

'17 c. 391, legalizes drainage ditch proceedings where the establishing same is void for lack of jurisdiction and provides for resumption of proceedings to conform with the order of the law.

'17 c. 451, validates such proceedings.

'19 c. 448 provides for the payment of additional estimates on certain judicial ditch contracts heretofore let.

IRRIGATION

6927. Dams and dikes authorized for irrigation purposes—The owner of any land in this state which is suitable for the culture of wire grass, cranberries, rice or other crops requiring irrigation, may upon being licensed as hereinafter provided, construct upon the lands so owned, and across or upon that portion of any public ditch, drain or watercourse situated within the boundaries of said land, such dams, dykes or other regulating or controlling works, as may be necessary to secure the use of the water for irrigation. Provided, that any dam so constructed shall contain properly constructed gates of sufficient size to carry off the flood water above high water mark within twenty-four hours. ('15 c. 189 § 1)

6928. License to be secured from state drainage engineer—Any owner desiring to avail himself of the provisions of this act, shall apply for license so to do, to the state drainage engineer of the State of Minnesota, who shall issue a license to the applicant for the same, under such rules and regulations and guarantees as said engineer may require. ('15 c. 189 § 2)

6929. Bond to be required—Before any license is granted, said licensee shall execute a bond to the State of Minnesota, for the use of all persons who may be injured by said construction, conditioned for the payment of all damages to persons or property by reason of the construction of said dams, dykes or the use of said water. ('15 c. 189 § 3)

6930. To be under supervision of engineer—All dams, dykes or other works or structures constructed or erected under the provisions of this act shall be

under the supervision and direction of said engineer. ('15 c. 189 § 4)

6931. Not to interfere with public ditches—Nothing in this act shall be construed as authorizing any act interfering with the benefit and utility of any public ditch, drain or watercourse, nor to in any manner authorize the use of the water to the damage or injury of the land of any other person, and if at any time it appears that the structures herein authorized cannot

be maintained without impairing the utility of a public drain or watercourse, nor without depriving other land owners of the benefit thereof, then and in that case such license shall, upon demand of the owner or owners of such other land, be immediately revoked. ('15 c. 189 § 5)

6932. Violation a misdemeanor—Any person violating any of the sections of this act shall be guilty of a misdemeanor. ('15 c. 189 § 6)

CHAPTER 45

6933
156-M 244

SEALS

6933. Private seals abolished—Private seals are abolished, and all written instruments formerly required by law to be sealed shall be equally effective for all purposes without a seal; but nothing herein shall apply to the use of corporate seals. (2652) [5704]

80-397, 83+385; 90-393, 96+1128. See 93-106, 100+636. Undisclosed principal bound by covenants in deed (115-373, 132+335). Undisclosed principal may sue on contract under seal made by his agent (116-280, 133+862).

121-304, 141+184. A seal is not essential to a deed (138-190, 164+810). Rule applied to sealed instruments prior to abolishment of private seals (194+618).

6934. Great seal—Description, where deposited—The seal heretofore used as the seal of the state is declared to be the seal thereof; and a description of the same, in writing, shall be recorded with the secretary

of state, and remain a public record in his office. (2653) [5705]

6935. Form of official seals—Upon every seal of a court or officer authorized or required to have a seal there shall be engraved the same device that is engraved on the seal of the state, and the name of the court or office in which it is to be used. Such seals shall be one and five-eighths inches in diameter. (2654) [5706]

40-65, 70, 41+459.

6936. Temporary seal, when used—When any court of record is unprovided with a seal, the judge thereof may authorize the use of any temporary seal, or of any device by way of seal, until one is provided. (2655) [5707]

CHAPTER 46

6937 Etc seq.
29 - 214

NOTARIES PUBLIC

6937. Appointment—Fee—The governor may appoint and commission as notaries public, by and with the advice and consent of the senate, as many citizens of this state, over the age of twenty-one years, resident in the county for which appointed, as he deems necessary. The fee for each commission shall not exceed three dollars, and shall be paid to the governor's private secretary. (2656) [5708]

6938. Term—Bond—Oath—Every notary so commissioned shall hold office for seven years, unless sooner removed by the governor or the district court; and, before entering upon the duties of his office, he shall give a bond to the state in the sum of two thousand dollars, to be approved by the governor, conditioned for the faithful discharge of the duties of his office, which, with his oath of office, shall be filed with the secretary of state. (2657) [5709]

Liability on defective bond (55-187, 56+751). Liability where notary certifies to acknowledgment without personal knowledge as to identity of party (100-289, 110+966).

129-221, 152+267.

6939. Seal—Register—Every notary shall provide himself with an official seal, with which he shall authenticate his official acts, and upon which shall be engraved the arms of this state, the words "Notarial Seal," and the name of the county in which he resides. Such seal, with his official register, shall be exempt from execution, and, on his death or removal from

office, such register shall be deposited with the clerk of the district court of his county. (2658) [5710]

Official acts of notary void unless authenticated by seal (28-118, 94+636; 39-102, 38+801; 81-225, 83+835. See 36-9, 29+338; 36-243, 31+211; 49-235, 51+920).

6940. Powers—Every such notary shall have power throughout the state, while residing in the county for which he was appointed, to administer all oaths required or authorized by law, to take and certify depositions, acknowledgments of deeds, and other instruments, and to receive, make out, and record notarial protests. (2659) [5711]

May administer oath required by ordinance (84-281, 87+764). Attorney in action, if notary, may take affidavit of service of summons therein (18-90, 72). Taking proof or acknowledgment ministerial, and not judicial (100-289, 110+966).

6941. Date of expiration of commission and name to be indorsed—Each notary public so appointed, commissioned and qualified, shall have power throughout this state, while residing within the county for which he was appointed, to administer all oaths required or authorized to be administered in this state; to take and certify all depositions to be used in any of the courts of this state; to take and certify all acknowledgments of deeds, mortgages, liens, powers of attorney and other instruments in writing and to receive, make out and record notarial protests.

Every notary public, taking an acknowledgment of an instrument, taking a deposition, administering an

6939
201-NW 604
6941
155-M 30
6939
161-M 147